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The Revised Codes of Montana of 1907

CONTAINING ALL LAWS OF A PERMANENT AND
GENERAL NATURE IN FORCE AFTER THE
ADJOURNMENT OF THE TENTH
LEGISLATIVE ASSEMBLY

COMPILED AND REVISED PURSUANT TO AUTHORITY OF
ACTS 1907, CHAPTER 85

BY

E. C. DAY, Commissioner.

VOL. I.

CONSTITUTIONS.
I. POLITICAL CODE.
II. CIVIL CODE.

ANNOTATED BY HENRY N. BLAKE

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The Revised Codes of Montana

of 1907

CONTAINING ALL LAWS OF A GENERAL NATURE
GENERAL NATURE IN A SINGLE VOLUME
ADJOURNMENT OF THE LEGISLATURE
THIRTY-FIVE YEARS

COMPILED AND REVISED BY THE ATTORNEY GENERAL

AT THE STATE PRINTING OFFICE

STATE LAW LIBRARY
Capitol Hill
Helena, Montana 59601

VOL. I

CONSTITUTION
A POLITICAL CODE
A CIVIL CODE

RECEIVED AT THE STATE PRINTING OFFICE

THE ATTORNEY GENERAL
OF THE STATE OF MONTANA
HELENA, MONTANA

Certificates of Authentication.

STATE OF MONTANA, }
County of Lewis and Clark. } ss.

I, E. C. Day, the duly and regularly appointed, qualified and acting Commissioner appointed and authorized to make compilation and revision of the codes and laws of Montana, pursuant to the provisions of Chapter 85, Laws of 1907, do hereby certify that this volume contains the revised and compiled Political and Civil Codes of the state of Montana as said codes exist at this time, eliminating provisions repealed by any of the four codes or by any of the session laws, or adjudged unconstitutional by the Supreme Court of Montana, by me codified and arranged in proper form and in their proper places, and that it is a true and correct copy of said laws now in force and effect, and is entitled to full faith and credit as a volume containing the Political and Civil Codes in force and effect in the State of Montana on the first day of July, 1907.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name this, the first day of April, 1908.

E. C. DAY,
Commissioner.

State of Montana, OFFICE OF SECRETARY OF STATE.

I, A. N. Yoder, the duly elected, qualified and acting, Secretary of State of Montana, do hereby certify that this volume contains the Political and Civil Codes, which said codes were duly and regularly compiled and revised by E. C. Day, Esq., pursuant to appointment and authority conferred upon him by Chapter 85, Laws of 1907, and that it is a true and correct copy of said codes as presented to my office by said Commissioner, and is entitled to full faith and credit.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the great seal of the State of Montana, at Helena, Montana, the Capital of said State, on this, the first day of April, 1908.

[SEAL]

A. N. YODER,
Secretary of State.

CONSTITUTIONS, ETC.

DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF
AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident—that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and, when so suspended he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of

and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:

JOHN HANCOCK.

New Hampshire.

JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Massachusetts Bay.

SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE.
ELBRIDGE GERRY.

Rhode Island.

STEPHEN HOPKINS,
WILLIAM ELLERY.

Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New York.

WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

New Jersey.

RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HEART,
ABRAHAM CLARK.

Maryland.

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHAS. CARROLL, of
Carrollton.

Pennsylvania.

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware.

CAESAR RODNEY,
GEORGE READ,
THOMAS M'KEAN,

Virginia.

GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FR. LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina.

WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina.

EDWARD RUTLEDGE,
THOMAS HAYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON.

Georgia.

BUTTON GUINETT,
LYMAN HALL,
GEORGE WALTON.

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I.

§ 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight,

Rhode Island and Providence plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

§ 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into the three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

§ 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and

such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

§ 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

§ 7. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by

yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

§ 8. The congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasion;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the

service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

§ 9. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

§ 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

§ 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice president, chosen for the same term, be elected as follows:—

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[*The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate, shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president. And if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the vote shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case after the choice of the president, the person having the greatest number

*This paragraph has been superseded by the 12th amendment.

of votes of the electors shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice president.]

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president, and the congress may by law provide for the case of removal, death, resignation, or inability both of the president and vice president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:—

“I do solemnly swear (*or affirm*), that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States.”

§ 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are

not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

§ 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4. The president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

§ 1. The judicial power of the United States shall be vested in one supreme court, and such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

§ 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states [*between a state and citizens of another state]; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme

*See article XI of Amendments.

court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

§ 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

§ 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings, of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

§ 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

§ 3. New states may be admitted by the congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any other state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

§ 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of

life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration, in this constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

ARTICLE XI

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in

distinct ballots the person voted for as vice president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice president of the United States.

ARTICLE XIII.

§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive

any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, including Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each House, remove such disability.

§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave, but all such debts, obligations, and claims shall be held illegal and void.

§ 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

§ 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

ORGANIC ACT

OF THE

TERRITORY OF MONTANA.

AN ACT to provide a temporary government for the territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington, with the fourth-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along the said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Montana: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act con-

tained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the territory of Montana, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never passed.

§ 2. *And be it further enacted*, That the executive power and authority in and over said territory of Montana, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory and shall be commander-in-chief of the militia and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieve for offenses against the laws of the United States, until the decision of the president of the United States can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

§ 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, for the use of congress. And in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor, during such

vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

§ 4. *And be it further enacted,* That the legislative power and authority of the said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters, as hereinafter prescribed, whose term of office shall continue two years. The house of representatives shall, at its first session, consist of thirteen members, possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district, or county, or counties for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts, respectively, for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives in each of said representative districts, respectively, shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election. And the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the

people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

§ 5. *And be it further enacted*, That all citizens of the United States, and those who have declared their intentions to become such, and who are otherwise described and qualified under the fifth section of the act of congress providing for a temporary government for the territory of Idaho, approved March third, eighteen hundred and sixty-three, shall be entitled to vote at said first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

§ 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory. If he approve, he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of such houses shall be determined by yeas and nays, to be entered on the journals of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the assembly by adjournment, prevent its return, in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said territory by act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

§ 7. *And be it further enacted*, That all township, district and county officers, not herein otherwise provided for, shall be

appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Montana. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for the members of the council and house of representatives and all other officers.

§ 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly. And no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly; or shall hold any office under the government of said territory.

§ 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of probate courts and of justices of the peace shall be limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts respectively shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The

supreme court, or the justices thereof, shall appoint its own clerk; and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the district and circuit courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all such cases, shall be made to the supreme court of said territory the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington territory now receive for similar services.

§ 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States. He shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the marshal of the district court of the United States for the present territory of Washington, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services. There shall also be appointed by the president of the United States, by and with the advice and consent of the senate, a surveyor general of said territory, who shall locate his office at such place as the secretary of the interior shall from time to time direct, and whose duties, powers,

obligations, responsibilities, compensation, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor general of New Mexico, under the direction of the secretary of the interior, and such instructions as he may from time to time deem it advisable to give.

§ 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, or before the chief justice or some associate justice of the supreme court of the United States, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. And any person who has heretofore been appointed chief justice or associate justice of the territory of Idaho, who has not yet taken the oath of office, as prescribed by the act organizing said territory, may take said oath or affirmation before the chief justice or some associate justice of the supreme court of the United States. The governor shall receive an annual salary of two thousand five hundred dollars; the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars; the secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly from the dates of the respective appointments at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each, per day, during their attendance at the sessions thereof, and four dollars each for every twenty miles travel in going to and returning from said sessions.

estimated according to the nearest usually travelled routes; an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms, and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day during the session of the legislative assembly; but no other officers shall be paid by the United States; *Provided*, That there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of the clerk of the executive department. And there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses. And the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

§ 12. *And be it further enacted*, That the legislative assembly of the territory of Montana shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible; *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed except by an act of the said assembly duly passed, and which shall be approved after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

§ 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of repre-

sentatives; but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections, the time and places, and manner of holding elections, shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Montana territory as elsewhere within the United States.

§ 14. *And be it further enacted*, That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

§ 15. *And be it further enacted*, That, until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or sub-divisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

§ 16. *And be it further enacted*, That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the territory of Montana, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

§ 17. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued, with the same power and duties which are now prescribed by law, except that the president of the United States

may, at his discretion, change the location of the office of said agencies or superintendents.

§ 18. *And be it further enacted*, That until congress shall otherwise direct, all that part of the territory of Idaho included within the following boundaries, to-wit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky Mountains; thence northward along the said crest of the Rocky Mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence eastward along said forty-fourth degree thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree north latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree north latitude; thence west along said forty-first degree north latitude to the place of beginning, shall be, and is hereby, incorporated temporarily into, and made part of, the territory of Dakota. [Approved May 26, 1864.]

AN ACT amendatory of "An Act to provide a temporary government for the territory of Montana," approved May 26, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislative assemblies of the several territories of the United States shall not, after the passage of this act, grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits.

§ 2. *And be it further enacted*, That the probate courts of the territory of Montana, in their respective counties, in addition to their probate jurisdiction, are hereby authorized to hear and determine civil causes wherein the damage or debt claimed does not exceed five hundred dollars, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury; *Provided*, That they shall not have jurisdiction in any matter in controversy when the title or right to the peaceable possession of land may be in dispute, or chancery, or divorce causes; *And provided further*, That in all cases an appeal may be taken from any order, judgment, or decree of said probate court to the district court.

§ 3. *And be it further enacted*, That the chief justice and associate justices of said territory and the territory of Idaho shall each receive an annual salary of thirty-five hundred dollars.

§ 4. *And be it further enacted*, That the judges of the supreme court of said territory, or a majority of them, shall, when assembled at the seat of government of said territory, define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and shall also fix and appoint the times and places for holding the courts in the several counties or sub-divisions in each of said judicial districts, and alter the times and places of holding the courts as to them shall seem proper and convenient, but not less than two terms shall be held at each place of holding court each year.

§ 5. *And be it further enacted*, That for the purpose of reviving the legislative functions of the territory of Montana, which have been adjudged therein to have lapsed, the governor of said territory be, and he is hereby, authorized, on or before the first day of July, eighteen hundred and sixty-seven, to divide said territory into legislative districts for the election of members of the council and house of representatives, and to apportion among said districts the number of members of the legislative assembly provided for in the organic act of said territory, and the election of said members of the legislative assembly shall be held at such time and shall be conducted in the manner prescribed by the legislative assembly of said territory at the session thereof, begun and holden at the city of Bannack, in eighteen hundred and sixty-four and eighteen hundred and sixty-five, and the qualifications of voters shall be the same as that prescribed by said organic act, saving and excepting the distinction therein made on account of race or color, and the legislative assembly, so elected, shall convene at the time prescribed by said legislative assembly at the session last aforesaid. The apportionment provided for in this section shall be based upon such an enumeration of the qualified electors of the said several legislative districts as shall appear from the election returns in the office of the secretary of said territory, and from such other sources of information as will enable the governor, without taking a new census, to make an apportionment which shall fairly represent the people of the several districts in both houses of the legislative assembly, but the legislature may at any time change the legislative districts of the territory as fixed by the governor.

§ 6. *And be it further enacted*, That all acts passed at the two sessions of the so-called legislative assembly of the territory of Montana, held in eighteen hundred and sixty-six, are hereby disapproved and declared null and void, except such acts as the legislative assembly herein authorized to be elected, shall by

special act, in each case, re-enact: *Provided, however,* That in all the claims of vested rights thereunder, the party claiming the same shall not, by reason of anything in this section contained, be precluded from making and testing said claim in the courts of said territory: *And provided further,* That no legislation or pretended legislation in said territory since the adjournment of the first legislative assembly shall be deemed valid until the election of the legislative assembly herein provided for shall take place.

§ 7. *And be it further enacted,* That from and after the first day of April next, the salary of each of the judges of the several supreme courts in each of the organized territories (except Montana and Idaho) shall be two thousand five hundred dollars.

§ 8. *And be it further enacted,* That all acts and parts of acts inconsistent with this act are hereby repealed. [*Approved March 2, 1867.*]

THE ENABLING ACT.

An act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana, and Washington, as at present described, may become the states of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.

§ 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time assemble in convention at the city of Sioux Falls.

§ 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories respectively, persons are required to possess to be eligible to the legislative assemblies thereof; and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states, in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two per-

sons for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice, and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, eighteen hundred and eighty-nine, which proclamation shall be issued on the fifteenth day of April, eighteen hundred and eighty-nine; and such election shall be conducted, the returns made, the result ascertained, and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively shall be seventy-five; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the constitutions.

§ 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories, except the delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the Fourth day of July, eighteen hundred and eighty-nine, and, after organization, shall declare, on behalf of the people of said proposed states, that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and state governments for said proposed states, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said states:

First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and

said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

§ 5. That the convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota: *Provided*, That at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot the words, "For the Sioux Falls constitution," or the words, "Against the Sioux Falls constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section three of this act; and if a majority of all votes cast on this question shall be "for the Sioux Falls constitution," it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection, at the election hereinafter provided for in this act, the constitution framed at Sioux Falls and adopted November third, eighteen hundred and eighty-five, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and boundary of the proposed State, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to com-

ply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a State in the Union under said constitution as hereinafter provided; but the archives, records and books of the Territory of Dakota shall remain at Bismarck, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "against the Sioux Falls constitution," then and in that event it shall be the duty of the convention which will assemble at the city of Sioux Falls on the fourth day of July, eighteen hundred and eighty-nine, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

§ 6. It shall be the duty of the constitutional convention of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of such states shall obligate itself to pay its proportion of said debts and liabilities the same as if they had been created by such states respectively.

§ 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the Territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the Territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the Union, be called by the name of the Territory of North Dakota or South Dakota, as the case may be: *Provided*, That if either of the proposed States provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the Governor of the Territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to

the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed State for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed State.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed States, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief-justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided shall be deemed admitted by congress into the union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two, and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the union sections numbered sixteen and thirty-six in every township of said proposed states, and where such section, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

§ 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

§ 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section ten of this act, shall be, and are hereby, granted to said states

for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

§ 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said States into the union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states respectively.

§ 14. That the lands granted to the Territories of Dakota and Montana by the act of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the States of South Dakota, North Dakota, and Montana, respectively, if such States are admitted into the Union, as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes. And such quantity of the lands authorized by the fourth section of the act of July seventeenth, eighteen hundred and fifty-four, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March fourteenth, eighteen hundred and sixty-four, will make the full quantity of seventy-two entire sections, are hereby granted in the like manner to the state of Washington for the purpose of a university in said state. None of the lands granted in this section shall be sold at less than ten dollars per acre; but said lands may be leased in the same manner as provided in section eleven of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college or university. The section of land granted by the act of June sixteenth, eighteen hundred and eighty, to the territory of Dakota, for an asylum for the insane shall, upon admission of the said state of South Dakota into the union, become the property of said state.

§ 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose men-

tioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March second, eighteen hundred and eighty-one, together with the buildings thereon, be, and the same is hereby granted, together with any unexpected balances of the moneys appropriated therefor by said act, to said state of South Dakota for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like terms and conditions as provided in said act of March second, eighteen hundred and eighty-one, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

§ 16. That ninety thousand acres of land, to be selected and located as provided in section ten of this act, are hereby granted to each of said states, except to the state of South Dakota, to which one hundred and twenty thousand acres are granted, for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purpose.

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September fourth, eighteen hundred and forty-one, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the revised statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to-wit:

To the state of South Dakota: For the school of mines, forty thousand acres; for the reform school, forty thousand acres; for the deaf and dumb asylum, forty thousand acres; for the agricultural college, forty thousand acres; for the university, forty thousand acres; for state normal schools, eighty thousand acres; for public buildings at the capital of said state, fifty thousand acres, and for such other educational and charitable purposes as the legislature of said state may determine, one hundred and seventy thousand acres; in all five hundred thousand acres.

To the state of North Dakota a like quantity of land as is in this section granted to the state of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricul-

tural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.

To the state of Washington: For the establishment and maintenance of a scientific school, one hundred thousand acres; for state normal schools, one hundred thousand acres; for public buildings at the state capital, in addition to the grant hereinbefore made for that purpose, one hundred thousand acres; for state charitable, educational, penal, and reformatory institutions, two hundred thousand acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any sub-division or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said states.

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

§ 20. That the sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota, for which the sum of forty thousand dollars is so appropriated, twenty thousand dollars each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid,

shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the Eighth judicial circuit, except Washington and Montana, which shall be attached to the Ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney, and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars, payable in four equal installments, on the first days of January, April, July, and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state; the regular term of said courts shall be held in each district at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts, and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district court of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

§ 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require: *Provided*, That the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to

the supreme court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the state of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts, herein named, shall, respectively, be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

§ 23. That in respect to all cases, proceedings and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded with in the proper United States circuit, district or state court, as the case may be: *Provided, however,* That in all civil actions, causes and proceedings, in which the United States is not a party, transfer shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and

in the absence of such request such cases shall be proceeded with in the proper state courts.

§ 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state governments shall remain in abeyance until the states shall be admitted into the union, respectively, as provided by this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize, and elect two senators of the United States; and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted into the union, the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments formed in pursuance of said constitution, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the union, shall be in force in said states, except as modified or changed by this act or by the constitutions of the states, respectively.

§ 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed. [*Approved February 22, 1889.*]

NATURALIZATION LAWS AND REGULATIONS.

NATURALIZATION LAWS.

ACT OF JUNE 29, 1906.^a

AN ACT TO ESTABLISH A BUREAU OF IMMIGRATION AND NATURALIZATION, AND TO PROVIDE FOR A UNIFORM RULE FOR THE NATURALIZATION OF ALIENS THROUGHOUT THE UNITED STATES.

[Stat. 1905-6, Part I. p. 596.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the designation of the Bureau of Immigration in the Department of Commerce and Labor is hereby changed to the "Bureau of Immigration and Naturalization," which said Bureau, under the direction and control of the Secretary of Commerce and Labor, in addition to the duties now provided by law, shall have charge of all matters concerning the naturalization of aliens. That it shall be the duty of the said Bureau to provide, for use at the various immigration stations throughout the United States, books of record, wherein the commissioners of immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this Act of the name, age, occupation, personal description (including height, complexion, color of hair and eyes), the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and, if entered through a port, the name of the vessel in which he comes. And it shall be the duty of said commissioners of immigration to cause to be granted to such alien a certificate of such registry, with the particulars thereof.^b

§ 2. That the Secretary of Commerce and Labor shall provide the said Bureau with such additional furnished offices within the city of Washington, such books of record and facilities, and such additional assistants, clerks, stenographers, typewriters, and

^a. See also pp. LXVI and LXVII for sections of United States Revised Statutes not affected by this act.

^b. Will be in practical use five years from date law went into effect.

other employees as may be necessary for the proper discharge of the duties imposed by this Act upon such Bureau, fixing the compensation of such additional employees until July first, nineteen hundred and seven, within the appropriations made for that purpose.

§ 3. That exclusive jurisdiction to naturalize aliens as citizens of the United States is hereby conferred upon the following specified courts:

United States circuit and district courts now existing, or which may hereafter be established by Congress in any State, United States district courts for the Territories of Arizona, New Mexico, Oklahoma, Hawaii, and Alaska, the supreme court of the District of Columbia, and the United States courts for the Indian Territory; also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited.

That the naturalization jurisdiction of all courts herein specified, State, Territorial, and Federal, shall extend only to aliens resident within the respective judicial districts of such courts.

The courts herein specified shall, upon the requisition of the clerks of such courts, be furnished from time to time by the Bureau of Immigration and Naturalization with such blank forms as may be required in the naturalization of aliens, and all certificates of naturalization shall be consecutively numbered and printed on safety paper furnished by said Bureau.

§ 4. That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:

First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy, in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however.* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration.

Second. Not less than two years nor more than seven years

after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and, if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition: *Provided*, That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application.

The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident of the United States for a period of at least five years continuously, and of the State, Territory, or district in which the application is made for a period of at least one year immediately preceding the date of the filing of his petition, and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States.

At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce

and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States,^a and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

Fifth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or has been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Sixth. When any alien who has declared his intention to become a citizen of the United States dies before he is actually naturalized the widow and minor children of such alien, may, by complying with the other provisions of this Act, be naturalized without making any declaration of intention.

§ 5. That the clerk of the court shall, immediately after filing the petition, give notice thereof by posting in a public and conspicuous place in his office, or in the building in which his office is situated, under an appropriate heading, the name, nativity, and residence of the alien, the date and place of his arrival in the United States, and the date, as nearly as may be, for the final

^a. See foot note b, page LI.

hearing of his petition, and the names of the witnesses whom the applicant expects to summon in his behalf; and the clerk shall, if the applicant requests it, issue a subpoena for the witnesses so named by the said applicant to appear upon the day set for the final hearing, but in case such witnesses can not be produced upon the final hearing other witnesses may be summoned.

§ 6. That petitions for naturalization may be made and filed during term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court, and in no case shall final action be had upon a petition until at least ninety days have elapsed after filing and posting the notice of such petition: *Provided*, That no person shall be naturalized nor shall any certificate of naturalization be issued by any court within thirty days preceding the holding of any general election within its territorial jurisdiction. It shall be lawful, at the same time and as part of the naturalization of any alien, for the court, in its discretion, upon the petition of such alien, to make a decree changing the name of said alien, and his certificate of naturalization shall be issued to him in accordance therewith.

§ 7. That no person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall be naturalized or be made a citizen of the United States.

§ 8. That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not speak the English language: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States: *And provided further*, That the requirements of this section shall not apply to any alien who has prior to the passage of this Act declared his intention to become a citizen of the United States in conformity with the law in force at the date of making such declaration: *Provided further*, That the requirements of section eight shall not apply to aliens who shall hereafter declare their intention to become citizens and who shall make homestead entries upon the public lands of the United States and comply in all respects with the laws providing for homestead entries on such lands.

§ 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final

order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

§ 10. That in case the petitioner has not resided in the State, Territory, or district for a period of five years continuously and immediately preceding the filing of his petition he may establish by two witnesses, both in his petition and at the hearing, the time of his residence within the State, provided that it has been for more than one year, and the remaining portion of his five years' residence within the United States required by law to be established may be proved by the depositions of two or more witnesses who are citizens of the United States, upon notice to the Bureau of Immigration and Naturalization and the United States attorney for the district in which said witnesses may reside.

§ 11. That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, and be heard in opposition to the granting of any petition in naturalization proceedings.

§ 12. That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters under the provisions of this Act to keep and file a duplicate of each declaration of intention made before him and to send to the Bureau of Immigration and Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him, whereon shall be entered a memorandum of all the essential facts set forth in such certificate. It shall also be the duty of the clerk of each of said courts to report to the said Bureau, within thirty days after the final hearing and decision of the court, the name of each and every alien who shall be denied naturalization, and to furnish to said Bureau duplicates of all petitions within thirty days after the filing of the same, and certified copies of such other proceedings and orders instituted in or issued out of said court affecting or relating to the naturalization of aliens as may be required from time to time by the said Bureau.

In case any such clerk or officer acting under his direction shall refuse or neglect to comply with any of the foregoing provisions he shall forfeit and pay to the United States the sum of twenty-five dollars in each and every case in which such violation or omission occurs, and the amount of such forfeiture may be re-

covered by the United States in an action of debt against such clerk.

Clerks of courts having and exercising jurisdiction in naturalization matters shall be responsible for all blank certificates of citizenship received by them from time to time from the Bureau of Immigration and Naturalization, and shall account for the same to the said Bureau whenever required so to do by such Bureau. No certificate of citizenship received by any such clerk which may be defaced or injured in such manner as to prevent its use as herein provided shall in any case be destroyed, but such certificate shall be returned to the said Bureau; and in case any such clerk shall fail to return or properly account for any certificate furnished by the said Bureau, as herein provided, he shall be liable to the United States in the sum of fifty dollars, to be recovered in an action of debt, for each and every certificate not properly accounted for or returned.

§ 13. That the clerk of each and every court exercising jurisdiction in naturalization cases shall charge, collect, and account for the following fees in each proceeding:

For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar.

For making, filing, and docketing the petition of an alien for admission as a citizen of the United States and for the final hearing thereon, two dollars; and for entering the final order and the issuance of the certificate of citizenship thereunder, if granted, two dollars.

The clerk of any court collecting such fees is hereby authorized to retain one-half of the fees collected by him in such naturalization proceeding; the remaining one-half of the naturalization fees in each case collected by such clerks, respectively, shall be accounted for in their quarterly accounts, which they are hereby required to render the Bureau of Immigration and Naturalization, and paid over to such Bureau within thirty days from the close of each quarter in each and every fiscal year, and the moneys so received shall be paid over to the disbursing clerk of the Department of Commerce and Labor, who shall thereupon deposit them in the Treasury of the United States, rendering an account therefor quarterly to the Auditor for the State and other Departments, and the said disbursing clerk shall be held responsible under his bond for said fees so received.

In addition to the fees herein required, the petitioner shall, upon the filing of his petition to become a citizen of the United States, deposit with and pay to the clerk of the court a sum of money sufficient to cover the expenses of subpœnaing and paying the legal fees of any witnesses for whom he may request a subpœna, and upon the final discharge of such witnesses they shall receive, if they demand the same from the clerk, the

customary and usual witness fees from the moneys which the petitioner shall have paid to such clerk for such purpose, and the residue, if any, shall be returned by the clerk to the petitioner: *Provided*, That the clerks of courts exercising jurisdiction in naturalization proceedings shall be permitted to retain one-half of the fees in any fiscal year up to the sum of three thousand dollars, and that all fees received by such clerks in naturalization proceedings in excess of such amount shall be accounted for and paid over to said Bureau as in case of other fees to which the United States may be entitled, under the provisions of this Act. The clerks of the various courts exercising jurisdiction in naturalization proceedings shall pay all additional clerical force that may be required in performing the duties imposed by this Act upon the clerks of courts from fees received by such clerks in naturalization proceedings. And in case the clerk of any court collects fees in excess of the sum of six thousand dollars in any one year, the Secretary of Commerce and Labor may allow to such clerk from the money which the United States shall receive additional compensation for the employment of additional clerical assistance, but for no other purpose, if in the opinion of the said Secretary the business of such clerk warrants such allowance.

§ 14. That the declarations of intention and the petitions for naturalization shall be bound in chronological order in separate volumes, indexed, consecutively numbered, and made part of the records of the court. Each certificate of naturalization issued shall bear upon its face, in a place prepared therefor, the volume number and page number of the petition whereon such certificate was issued, and the volume number and page number of the stub of such certificate.

§ 15. That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. In any such proceedings the party holding the certificate of citizenship alleged to have been fraudulently or illegally procured shall have sixty days personal notice in which to make answer to the petition of the United States; and if the holder of such certificate be absent from the United States or from the district in which he last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.

If any alien who shall have secured a certificate of citizenship

under the provisions of this Act shall, within five years after the issuance of such certificate, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered *prima facie* evidence of a lack of intention on the part of such alien to become a permanent citizen of the United States at the time of filing his application for citizenship, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the cancellation of his certificate of citizenship as fraudulent, and the diplomatic and consular officers of the United States in foreign countries shall from time to time, through the Department of State, furnish the Department of Justice with the names of those within their respective jurisdictions who have such certificates of citizenship and who have taken permanent residence in the country of their nativity, or in any other foreign country, and such statements, duly certified, shall be admissible in evidence in all courts in proceedings to cancel certificates of citizenship.

Whenever any certificate of citizenship shall be set aside or canceled, as herein provided, the court in which such judgment or decree is rendered shall make an order canceling such certificate of citizenship and shall send a certified copy of such order to the Bureau of Immigration and Naturalization; and in case such certificate was not originally issued by the court making such order it shall direct the clerk of the court to transmit a copy of such order and judgment to the court out of which such certificate of citizenship shall have been originally issued. And it shall thereupon be the duty of the clerk of the court receiving such certified copy of the order and judgment of the court to enter the same of record and to cancel such original certificate of citizenship upon the records and to notify the Bureau of Immigration and Naturalization of such cancellation.

The provisions of this section shall apply not only to certificates of citizenship issued under the provisions of this Act, but to all certificates of citizenship which may have been issued heretofore by any court exercising jurisdiction in naturalization proceedings under prior laws.

§ 16. That every person who falsely makes, forges, counterfeits, or causes or procures to be falsely made, forged, or counterfeited, or knowingly aids or assists in falsely making, forging, or counterfeiting any certificate of citizenship, with intent to use the same, or with the intent that the same may be used by some other person or persons, shall be guilty of a felony, and a person convicted of such offense shall be punished by imprisonment for not more than ten years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment.

§ 17. That every person who engraves or causes or procures to be engraved, or assists in engraving, any plate in the likeness

of any plate designed for the printing of a certificate of citizenship, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of Commerce and Labor, or other proper officer, and any person who has in his control, custody, or possession any metallic plate engraved after the similitude of any plate from which any such certificate has been printed, with intent to use such plate or suffer the same to be used in forging or counterfeiting any such certificate or any part thereof; and every person who prints, photographs, or in any other manner causes to be printed, photographed, made, or executed, any print or impression in the likeness of any such certificate, or any part thereof, or who sells any such certificate, or brings the same into the United States from any foreign place, except by direction of some proper officer of the United States, or who has in his possession a distinctive paper which has been adopted by the proper officer of the United States for the printing of such certificate, with intent to unlawfully use the same, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment at hard labor for not more than ten years, or by both such fine and imprisonment.

§ 18. That it is hereby made a felony for any clerk or other person to issue or be a party to the issuance of a certificate of citizenship contrary to the provisions of this Act, except upon a final order under the hand of a court having jurisdiction to make such order, and upon conviction thereof such clerk or other person shall be punished by imprisonment for not more than five years and by a fine of not more than five thousand dollars, in the discretion of the court.

§ 19. That every person who without lawful excuse is possessed of any blank certificate of citizenship provided by the Bureau of Immigration and Naturalization, with intent unlawfully to use the same, shall be imprisoned at hard labor not more than five years or be fined not more than one thousand dollars.

§ 20. That any clerk or other officer of a court having power under this Act to naturalize aliens, who wilfully neglects to render true accounts of moneys received by him for naturalization proceedings or who wilfully neglects to pay over any balance of such moneys due to the United States within thirty days after said payment shall become due and demand therefor has been made and refused, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than five years, or by a fine of not more than five thousand dollars, or both.

§ 21. That it shall be unlawful for any clerk of any court or his authorized deputy or assistant exercising jurisdiction in naturalization proceedings to demand, charge, collect, or receive any

other or additional fees or moneys in naturalization proceedings save the fees and moneys herein specified; and a violation of any of the provisions of this section or any part thereof is hereby declared to be a misdemeanor and shall be punished by imprisonment for not more than two years, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment.

§ 22. That the clerk of any court exercising jurisdiction in naturalization proceedings, or any person acting under authority of this Act, who shall knowingly certify that a petitioner, affiant, or witness named in an affidavit, petition, or certificate of citizenship, or other paper or writing required to be executed under the provisions of this Act, personally appeared before him and was sworn thereto, or acknowledged the execution thereof or signed the same, when in fact such petitioner, affiant, or witness did not personally appear before him, or was not sworn thereto, or did not execute the same, or did not acknowledge the execution thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not to exceed five years.

§ 23. That any person who knowingly procures naturalization in violation of the provisions of this Act shall be fined not more than five thousand dollars, or shall be imprisoned not more than five years, or both, and upon conviction the court in which such conviction is had shall thereupon adjudge and declare the final order admitting such person to citizenship void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication. Any person who knowingly aids, advises, or encourages any person not entitled thereto to apply for or to secure naturalization, or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceeding knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceeding, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

§ 24. That no person shall be prosecuted, tried, or punished for any crime arising under the provisions of this Act unless the indictment is found or the information is filed within five years next after the commission of such crime.

§ 25. That for the purpose of the prosecution of all crimes and offenses against the naturalization laws of the United States which may have been committed prior to the date when this Act shall go into effect, the existing naturalization laws shall remain in full force and effect.

§ 26. That sections twenty-one hundred and sixty-five, twenty-one hundred and sixty-seven, twenty-one hundred and sixty-eight, twenty-one hundred and seventy-three of the Revised Statutes

of the United States of America, and section thirty-nine of chapter one thousand and twelve of the Statutes at Large of the United States of America for the year nineteen hundred and three, and all Acts or parts of Acts inconsistent with or repugnant to the provisions of this Act are hereby repealed.

§ 27. That substantially the following forms shall be used in the proceedings in which they relate:

DECLARATION OF INTENTION.

(Invalid for all purposes seven years after the date hereof.)

....., ss:

I,, aged years, occupation, do declare on oath (affirm) that my personal description is: Color, complexion, height, weight, color of hair, color of eyes, other visible distinctive marks; I was born in on the day of, anno Domini; I now reside at; I emigrated to the United States of America from on the vessel; my last foreign residence was It is my bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which I am now a citizen (subject); I arrived at the (port) of, in the State (Territory or District) of on or about the day of anno Domini; I am not an anarchist; I am not a polygamist nor a believer in the practice of polygamy; and it is my intention in good faith to become a citizen of the United States of America and to permanently reside therein. So help me God.

(Original signature of declarant)

Subscribed and sworn to (affirmed) before me this day of, anno Domini

[L. S.]

..... .

(Official character of attestor.)

PETITION FOR NATURALIZATION.

..... Court of

In the matter of the petition of to be admitted as a citizen of the United States of America.

To the Court:

The petition of respectfully shows:

First. My full name is

Second. My place of residence is number street, city of, State (Territory or District) of

Third. My occupation is

Fourth. I was born on the day of at

Fifth. I emigrated to the United States from, on or

about the day of, anno Domini, and arrived
at the port of, in the United States, on the vessel

Sixth. I declared my intention to become a citizen of the United States on the day of at, in the court of

Seventh. I am .. married. My wife's name is
 She was born in and now resides at I have
 children, and the name, date, and place of birth and place
 of residence of each of said children is as follows: ;
 ;

Eighth. I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States, and it is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to, of which at this time I am a citizen (or subject), and it is my intention to reside permanently in the United States.

Ninth. I am able to speak the English language.

Tenth. I have resided continuously in the United States of America for a term of five years at least immediately preceding the date of this petition, to-wit, since, anno Domini, and in the State (Territory or District) of for one year at least next preceding the date of this petition, to-wit, since day of, anno Domini

Eleventh. I have not heretofore made petition for citizenship to any court. (I made petition for citizenship to the court of at, and the said petition was denied by the said court for the following reasons and causes, to-wit,, and the cause of such denial has since been cured or removed.)

Attached hereto and made a part of this petition are my declaration of intention to become a citizen of the United States and the certificate from the Department of Commerce and Labor required by law. Wherefore your petitioner prays that he may be admitted a citizen of the United States of America.

Dated

(Signature of petitioner)

....., SS:

....., being duly sworn, deposes and says that he is the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein

stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

Subscribed and sworn to before me this day of,
anno Domini

[L. S.]

.....,
Clerk of the Court.

AFFIDAVIT OF WITNESSES.

..... Court of

In the matter of the petition of to be admitted a
citizen of the United States of America.

....., ss:

....., occupation, residing at, and
....., occupation, residing at, each being sever-
ally, duly, and respectively sworn, deposes and says that he is
a citizen of the United States of America; that he has personally
known, the petitioner above mentioned, to be a
resident of the United States for a period of at least five years
continuously immediately preceding the date of filing his petition,
and of the State (Territory or District) in which the above-en-
titled application is made for a period of years immedi-
ately preceding the date of filing his petition; and that he has
personal knowledge that the said petitioner is a person of good
moral character, attached to the principles of the Constitution of
the United Staes, and that he is in every way qualified, in his
opinion, to be admitted as a citizen of the United States.

.....
.....
Subscribed and sworn to before me this day of,
nineteen hundred and

[L. S.]

.....,
(Official character of attester).

CERTIFICATE OF NATURALIZATION.

Number

Petition, volume, page

Stub, volume, page

(Signature of holder)

Description of holder: Age,; height,; color;
.....; complexion,; color of eyes,; color of hair,
.....; visible distinguishing marks, Name, age, and
place of residence of wife,,, Names, ages,
and places of residence of minor children,,,;
.....,,;,

..... ss:

Be it remembered, that at a term of the court of

....., held at on the day of, in the year of our Lord nineteen hundred and,, who previous to his (her) naturalization was a citizen or subject of, at present residing at number street, city (town), State (Territory or District), having applied to be admitted a citizen of the United States of America pursuant to law, and the court having found that the petitioner had resided continuously within the United States for at least five years and in this State for one year immediately preceding the date of the hearing of his (her) petition, and that said petitioner intends to reside permanently in the United States, had in all respects complied with the law in relation thereto, and that ..he was entitled to be so admitted, it was thereupon ordered by the said court that ..he be admitted, as a citizen of the United States of America.

In testimony whereof the seal of said court is hereunto affixed on the day of, in the year of our Lord nineteen hundred and and of our independence the

[L. S.]

(Official character of attester).

STUB OF CERTIFICATE OF NATURALIZATION.

No. of certificate,

Name; age,

Declaration of intention, volume, page

Petition, volume, page

Name, age, and place of residence of wife,,,

Names, ages, and places of residence of minor children,

.....;,,,,,,

.....,,,

.....

.....

Date of order, volume, page

(Signature of holder)

§ 28. That the Secretary of Commerce and Labor shall have power to make such rules and regulations as may be necessary for properly carrying into execution the various provisions of this Act. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this Act shall be admitted in evidence equally with the originals in any and all proceedings under this Act and in all cases in which the originals thereof might be admissible as evidence.

§ 29. That for the purpose of carrying into effect the provisions of this Act there is hereby appropriated the sum of one hundred thousand dollars, out of any moneys in the Treasury of the United States not otherwise appropriated, which appropria-

tion shall be in full for the objects hereby expressed until June thirtieth, nineteen hundred and seven; and the provisions of section thirty-six hundred and seventy-nine of the Revised Statutes of the United States shall not be applicable in any way to this appropriation.

§ 30. That all the applicable provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States, and who may become residents of any State or organized Territory of the United States, with the following modifications: The applicant shall not be required to renounce allegiance to any foreign sovereignty; he shall make his declaration of intention to become a citizen of the United States at least two years prior to his admission; and residence within the jurisdiction of the United States, owing such permanent allegiance; shall be regarded as residence within the United States within the meaning of the five years' residence clause of the existing law.

§ 31. That this Act shall take effect and be in force from and after ninety days from the date of its passage: *Provided*. That sections one, two, twenty-eight, and twenty-nine shall go into effect from and after the passage of this Act.

Approved, June 29, 1906.

[In regard to the acquisition of citizenship by other means than naturalization, see secs. 1992 to 1995, inclusive, of the United States Revised Statutes. See also sec. 2172 of the Revised Statutes.]

UNITED STATES REVISED STATUTES.

TITLE, NATURALIZATION.^a

Honorably discharged soldiers exempt from certain formalities.

§ 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such

^a. For list of sections repealed see page LXI ante, section 26 of act of June 29, 1906.

person's having been honorably discharged from the service of the United States.

Aliens of African nativity and descent.

§ 2169. (*As amended, 1875.*)—The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.

Naturalization to alien enemies prohibited.

§ 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Alien seamen of merchant vessels.

§ 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

TWENTY-SECOND STATUTES AT LARGE, PAGE 58.

Naturalization of Chinese prohibited.

§ 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

TWENTY-EIGHTH STATUTES AT LARGE, PAGE 124.

Aliens honorably discharged from service in Navy or Marine Corps.

Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps.

AN ACT TO VALIDATE CERTAIN CERTIFICATES OF NATURALIZATION.

[Stat. 1905-6, Part I, p. 630.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That naturalization certificates issued after the Act approved March third, nineteen hundred and three, entitled "An Act to regulate the immigration of aliens into the United States," went into effect, which fail to show that the courts issuing said certificates complied with the requirements of section thirty-nine of said Act, but which were otherwise lawfully issued, are hereby declared to be as valid as though said certificates complied with said section: *Provided,* That in all such cases applications shall be made for new naturalization certificates, and when the same are granted, upon compliance with the provisions of said Act of nineteen hundred and three, they shall relate back to the defective certificates, and citizenship shall be deemed to have been perfected at the date of the defective certificate.

§ 2. That all the records relating to naturalization, all declarations of intention to become citizens of the United States, and all certificates of naturalization filed, recorded, or issued prior to the time when this Act takes effect in or from the criminal court of Cook County, Illinois, shall for all purposes be deemed to be and to have been made, filed, recorded, or issued by a court with jurisdiction to naturalize aliens, but shall not be by this Act further validated or legalized.

Approved, June 29, 1906.

NATURALIZATION REGULATIONS.

These Regulations supersede Regulations of October 2, 1906.

DEPARTMENT OF COMMERCE AND LABOR,

OFFICE OF THE SECRETARY,

Washington, September 23, 1907.

1. On and after September 27, 1906, declarations of intention to become citizens of the United States shall be filed with the clerks of such State courts only as have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited."

2. Declarations of intention made prior to September 27, 1906, before clerks of courts having jurisdiction to naturalize aliens under the provisions of the law existing at the time such declarations were made, may be used in lieu of the declarations required by the act of June 29, 1906, at any time after the expiration of two years from the date when made.

3. Aliens who made declarations of intention prior to September 27, 1906, under the provisions of law in force at the time of making such declarations, can not be required to file new declarations of intention under the Act of June 29, 1906, as a preliminary to filing their petitions for naturalization.

Aliens who have made the declaration of intention required by law prior to September 27, 1906, must comply with all requirements of the Act of June 29, 1906, in regard to the filing of petitions for naturalization and furnishing proof, except that they will not be required to speak the English language or to sign petitions in their own handwriting.

4. Any alien who declares his intention on and after September 27, 1906, and files his petition thereon, must sign said petition in his own handwriting and must be able to speak the English language, unless excepted by the provisos in section 8 of the naturalization act. If an alien is physically unable to speak, that fact should be stated in his petition in lieu of the statement, "I am able to speak the English language." Aliens who arrive in the United States before reaching 18 years of age can not obtain citizenship without making declaration of intention, which may be made at the place of their established residence after reaching that age.

5. Blank forms "Facts for declaration of intention" (Form 2213) and "Facts for petition for naturalization" (Form 2214) are provided clerks of courts for the preliminary use of persons making declaration of intention or petition for naturalization, and may be taken away from the office of the clerk in order that the information called for may be obtained in full. When either of said forms is returned to the clerk he shall examine it to see that all the information required is furnished before proceeding to make out a declaration or petition.

6. Declarations of intention will be furnished in bound volumes (Form 2202, 2202A, or 2202B) as a court record, varied in number of pages according to the requirements of the court. In addition to the bound records, the duplicate and triplicate declarations of intention (Form 2203) will be furnished as loose sheets attached together and perforated, so that they can be readily torn apart, the triplicate to be given to the declarant and the duplicate to be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization). Each bound record will contain an index in addition to the original declarations of intention, and will be paged in consecutive order. At the time the original declarations of intention in the bound volumes are filled out and signed the names of the declarants must be entered in the index. The declarations shall be numbered consecutively beginning with No. 1 in volume 1 and continuing the sequence from volume to volume.

7. The originals of the petitions for naturalization will also be furnished in bound volumes (Form 2204, 2204A, or 2204B) of varied size, paged in consecutive order and provided with an index. The duplicate petitions (Form 2205) will be furnished as loose sheets and when executed must be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail, as provided in Rule 22 of these regulations. The original petitions for naturalization in the bound volumes must be filled out and signed, the names of the petitioners entered in the index, and retained as part of the permanent records of the office in which filed. Petitions shall be numbered consecutively, beginning with No. 1 in volume 1 and continuing in order in the following volumes. The first petition in volume 2 must not be numbered "1," but shall receive the number following that given the last petition in volume 1.

8. Certificates of naturalization (Form 2207) will be supplied in bound volumes consisting of original and duplicate certificates and stubs. Each original and duplicate certificate and the stub will be given the same serial number, the stub to the original certificate bearing a page number in addition to its serial number. Each book will bear a volume number, and the volume number and page of the stub must be given on the face of the certificate. The original certificate will be given to the petitioner in accordance with the final order of the court, and the duplicate shall be forwarded to the Bureau of Immigration and Naturalization (Division of Naturalization) by registered mail, as provided in Rule 22 of these regulations, the stub to the original constituting a part of the permanent records of the court. The bound volumes, containing the declarations, petitions, and certificates, constitute the "records" and dockets re-

quired by sections 6 and 14 of the naturalization act. The Department requires no other dockets to be kept.

9. No certificate of naturalization shall be issued to a petitioner until after the judge of the court granting naturalization has signed the order to that effect.

10. Clerks of courts will be furnished with requisition blanks (Form 2201) on which are listed, by number and title, all blank forms, including record and order books, to be used in the naturalization of aliens, and these forms must be obtained exclusively from the Department of Commerce and Labor (Division of Naturalization), none other being official. Manila envelopes or jackets (Form 2211) will be furnished to clerks in which to place the triplicate declaration of intention or the original certificate of naturalization before delivering it to the person making the declaration or to the person naturalized.

11. The first supply of blank forms will be furnished upon the written application of the clerks of courts having jurisdiction to naturalize aliens, accompanied, in the case of clerks of State courts, by authoritative evidence (preferably the certificate of the attorney general of the State) that the courts of which such clerks are officers have "a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Subsequent supplies of such blank forms will be furnished the clerks of courts having jurisdiction to naturalize aliens upon the receipt by the Bureau of Immigration and Naturalization (Division of Naturalization) of requisitions made on Form 2201.

12. Clerks of courts when first making applications to the Bureau of Immigration and Naturalization (Division of Naturalization) for the supplies of the blank forms required in the naturalization of aliens shall state, as to the two years next preceding the date of such application, the number of declarations of intention filed with them and the number of orders of naturalization made by their courts, respectively.

All applications for supplies of certificates of naturalization (Form 2207) should be accompanied by a statement of the number, if any, of certificates of naturalization issued by the clerks of courts making such applications since June 1, 1903, if such certificates failed to comply with the requirements of the immigration act of March 3, 1903.

13. Where the same court holds sessions at different places, whether a clerk is appointed at each of said places or the one clerk is required to transact the business of the court wherever it may sit, separate supplies shall be kept, in order to comply with the requirements of section 14 of the naturalization act, which provides that the bound declarations of intention and of petitions for naturalization shall be in chronological order.

14. In every case in which the name of a naturalized alien is changed by order of court, as provided in section 6, the clerk of the court is required to report both the original and the new name of the said person to the Bureau of Immigration and Naturalization (Division of Naturalization) when transmitting to it the duplicate of the certificate of naturalization of the alien whose name is changed.

15. On the first working day of each month the clerk shall inform the Bureau of Immigration and Naturalization (Division of Naturalization) on Form 2209 of the date of posting notice on Form 2206, as required by section 5, and of the day, month, and year, as near as may be, for the final hearing of each and every petition for naturalization filed and posted during the preceding month. These reports on Form 2209 must specify only the petitions filed in the month to which the report relates and no others. The specific dates of postponed hearings shall also be reported promptly on Form 2209, using a separate sheet, and in such continued cases notice on Form 2206 must be amended to show the postponed date and remain posted until final action is had.

16. On the first working day of each month following the sitting of a court in naturalization cases the clerk of such court shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) on Form 2210 a list containing the name of each and every alien who, during such sitting of court, has been denied naturalization and shall state the reason or reasons for such denial.

17. Applications for the issuance of declarations of intention (Form 2203) or certificates of naturalization (Form 2207), in lieu of declarations of intention or certificates of naturalization claimed to have been lost or destroyed, shall be made under oath to the clerk of the court by which any such declarations of intention or certificates of naturalization were originally issued, and shall contain full information in regard to the lost or destroyed papers, and as to the time, place, and circumstances of such alleged loss or destruction. The clerk shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the above-mentioned applications, together with such information as he may have bearing upon the merits thereof, for investigation, and no such paper so applied for shall be issued until the Bureau of Immigration and Naturalization (Division of Naturalization) reports the results of its investigation as to the merits of the application.

In every case in which the clerk of the court issues, in accordance with the foregoing, a declaration of intention (Form 2203) or a certificate of naturalization (Form 2207), upon proof of the loss or destruction of the original, he shall make an entry on the

original declaration or on the stub of the original certificate of naturalization, as the case may require, showing the issuance of a new paper and the number thereof, and shall immediately thereafter forward to the Bureau of Immigration and Naturalization (Division of Naturalization) the duplicate of any such paper so issued.

Certified copies of declarations of intention (Form 2215) and certificates of naturalization (Form 2216) may be provided by clerks of courts under their hand and the seal of the court out of which the papers originally issued, only for the use of persons who make entry upon public lands of the United States, and who are required to submit proof that they have declared their intention to become citizens, or have become naturalized. When issued these forms must be made in duplicate, one to be given to the person applying therefor and the duplicate forwarded with other naturalization papers on the first working day of the succeeding month to the Bureau of Immigration and Naturalization (Division of Naturalization). Unless the applicant presents to the clerk his original declaration or certificate for comparison, these forms can under no conditions be issued.

A charge of \$1 may be made for the issuance of each of the copies of declarations of intention and \$2 for each of the copies of certificates of naturalization described in this regulation, the full amount to be retained by the clerks of courts for the work connected with issuing such duplicates. Clerks are, however, required to make quarterly reports, on Form 2217, on the first working day of January, April, July, and October, of the number of such papers issued during the preceding quarter.

This rule applies exclusively to naturalization papers issued since September 26, 1906.

18. Original declarations of intention or certificates of naturalization issued subsequently to September 26, 1906, and surrendered to the General Land Office in support of entries on public land may be returned upon proper application. The clerk will forward the application, accompanied by a certified copy on Form 2215 or 2216, as the case may be, to the Bureau of Immigration and Naturalization (Division of Naturalization). The originals will then be procured from the General Land Office and returned to the clerk of the court.

19. For recording the affidavits of additional witnesses under section 10, or substituted witnesses under section 5, of the act of June 29, 1906, blank forms (Form 2218) have been prepared as pasters to be affixed to the backs of petitions in the bound volume, following the "Order of court admitting petitioner." Copies of this form may be procured by the usual requisition (Form 2201).

20. Aliens making declaration of intention, or filing petitions for naturalization, must sign their names in full and without ab-

breviation in the appropriate places on the various blank forms, and the entries of their names by the clerk must correspond in every particular. Where a name contains an initial which is used only to distinguish one individual from another with the same surname that fact should be noted on the paper.

21. Clerks of courts shall not receive declarations of intention (Form 2202) or file petitions for naturalization (Form 2204) from other aliens than white persons and persons of African nativity or of African descent, nor from persons not residing in the judicial district within which the court is held.

22. On the first working day of each and every month, and not otherwise, clerks of courts shall forward to the Bureau of Immigration and Naturalization (Division of Naturalization) duplicates of all declarations of intention, petitions for naturalization, and certificates of naturalization filed or issued during the preceding month. Duplicate petitions for naturalization and duplicate certificates of naturalization shall be forwarded by registered mail; and duplicate declarations of intention as well as other papers may be inclosed therewith provided the combined weight of the documents does not exceed 4 pounds, otherwise they shall be forwarded separately by unregistered mail. The same course should be followed in forwarding naturalization papers to the Bureau which have been returned for correction. Each clerk making a shipment of naturalization papers other than papers returned for correction is required to forward therewith a report on Form 2208 showing the number of such papers filed or issued during the month reported. Where petitions for naturalization have been filed the report on Form 2209 showing the approximate dates of final hearings shall also be inclosed with such shipment. When no naturalization business has been transacted during any month it is unnecessary to render monthly reports to that effect, but report should be made as prescribed in Rule 23.

23. All fees provided for in section 13 of the act of June 29, 1906, shall be accounted for on the "Abstract of collections" (Form 2212) within thirty days after the close of each quarter of a fiscal year. These quarters end September 30, December 31, March 31, and June 30, respectively. One-half of all moneys so collected, up to \$6,000, and all in excess thereof, shall be remitted to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, with said quarterly account, such remittance to be made payable to the order of the "Secretary of Commerce and Labor," preferably by draft. The Comptroller of the Treasury has decided that section 13 requires the collection of the final fee of \$2 whether the certificate of naturalization be issued or denied.

In cases where no naturalization business is transacted during

any quarter Form 2212 shall be forwarded as aforesaid with the words "No transactions" noted thereon.

24. An alien of the age of 21 years and upward may be admitted to become a citizen without making declaration of his intention if he has been honorably discharged from the armies of the United States, or after a service of five consecutive years in the United States Navy, or after one enlistment of four years in the United States Marine Corps. Clerks of courts should appropriately insert in lieu of the sixth assertion on petition (Form 2204) ; "Petitioner is an honorably discharged (soldier, member of the Navy, or member of the Marine Corps) and makes application for citizenship under (section 2166 R. S., or act of July 26, 1894). He enlisted in the (name of organization) on the (day, month, and year)." The first sentence of the last paragraph preceding the signature of the petitioner should be struck through. In lieu of the statement following the jurat there should be substituted "Honorably discharge certificate of petitioner was exhibited to me this day of" An appropriate note should also be entered upon the stub of the certificate issued to said applicant.

25. So far as practicable the clerks of courts having jurisdiction under the provisions of the naturalization laws will be furnished, upon requisition therefor on Form 2201, with appropriately addressed envelopes for communicating with the Bureau. When not using such envelopes, however, all communications, in addition to the other necessary address, should be plainly marked "Division of Naturalization."

26. Clerks of courts having jurisdiction to naturalize under the provisions of the act of June 29, 1906, are requested, in case the foregoing rules and regulations fail to remove from their minds doubt as to the proper course of action in any case, to write to the Chief of the Division of Naturalization, Bureau of Immigration and Naturalization, for instructions before taking such action.

OSCAR S. STRAUSS,
Secretary.

CONSTITUTION

OF THE

STATE OF MONTANA.

AS ADOPTED BY THE CONSTITUTIONAL CONVENTION AUGUST 17TH,
1889; RATIFIED BY THE PEOPLE, OCTOBER 1ST, 1889; STATE
ADMITTED, NOVEMBER 8TH, 1889.

PREAMBLE.

We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A. D. 1889, ordain and establish this constitution.

ARTICLE I.

BOUNDARIES.

§ 1. The boundaries of the state of Montana shall be as follows, to-wit: Beginning at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude, thence due west on the forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington, thence due south along the thirty-fourth degree of longitude, to a point formed by its intersection with the crest of the Rocky mountains, thence following the crest of the Rocky mountains northward to its intersection with the Bitter Root mountains; thence northward along the crest of the Bitter Root mountains, to its intersection with the thirty-ninth degree of longitude west from Washington; thence along the thirty-ninth degree of longitude northward to the boundary line of the British Possessions; thence eastward along that boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along the twenty-seventh degree of longitude to the place of beginning.

ARTICLE II.

MILITARY RESERVATIONS.

§ 1. Authority is hereby granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana; and the legislative assembly is authorized and directed to enact any law necessary or proper to give effect to this article.

Provided, That there be and is hereby reserved to the state the right to serve all legal process of the state, both civil and criminal, upon persons and property found within any of said reservations in all cases where the United States has not exclusive jurisdiction.

State v. Tully, 31 Mont. 375; 78 Pac. 763. This section acknowledges absolute sovereignty in the United States over the places named therein.

ARTICLE III.

A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

§ 1. All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only and is instituted solely for the good of the whole.

State v. Hogan, 24 Mont. 391; 62 Pac. 585. This guaranty refers to the right of naming candidates for public office and the right of the electors to vote for the candidates at the polls.

§ 2. The people of the state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state, and to alter and abolish their constitution and form of government, whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the constitution of the United States.

§ 3. All persons are born equally free, and have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties, of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness in all lawful ways.

Hinds v. Wilcox, 22 Mont. 11; 55 Pac. 358. Sections 3 and 27 of this Article imply, if they do not express, a prohibition against the power of the legislature to enact a law whose effect would be the impairment of a vested right.
B. & B. Co. v. M. O. P. Co., 25 Mont. 68; 63 Pac. 826. The amendment ap-

proved February 28, 1899, to section 592 of the Code of Civil Procedure, relating to property held in tenancy in common, impairs the vested rights of co-

tenants whose estates were in existence at the time the amendment became operative, and is repugnant to sections 3 and 27 of this article.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion, but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace or safety of the state, or opposed to the civil authority thereof, or of the United States. No person shall be required to attend any place of worship or support any ministry, religious sect or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

§ 5. All elections shall be free and open, and no power civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

State v. Long, 21 Mont. 34; 52 Pac. 647. The law approved March 6, 1897, providing for the election of school trustees, does not prevent the free exercise of the right of suffrage. A school election was held in Butte, and when the polls closed, some persons who had stood in line awaiting their turns to

vote were not able to cast their ballots. There were five voting places and the facilities were inadequate to accommodate electors who wished to vote, and did not attempt to vote until the latter part of the day. The law cannot be declared unconstitutional for these reasons.

§ 6. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character; and that right and justice shall be administered without sale, denial or delay.

Edgerton v. Edgerton, 12 Mont. 145; 29 Pac. 973. A decree of divorce, obtained by a husband against his wife, which bears no infirmity on its face, cannot be collaterally assailed, in an action brought by the wife to enforce maintenance. Maintenance of a wife may be enforced by the district courts of this state, in the exercise of their equity jurisdiction, by decreeing proper relief in an action by the wife against her husband, independently of an action for divorce.

Wortman v. Kleinschmidt, 12 Mont.

331; 30 Pac. 284. The act approved March 14, 1889, providing that in actions for the foreclosure of mechanics' liens, the owner of the property subject to the lien shall pay as costs a reasonable attorney fee, is constitutional.

Sackett v. Thomas, 25 Mont. 238; 64 Pac. 505.

State v. Clancy, 30 Mont. 543; 77 Pac. 317. The act approved December 10, 1903, authorizing each party to disqualify five district judges by filing an affidavit of prejudice does not violate this section.

§ 7. The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, nor without probable cause, supported by oath or affirmation, reduced to writing.

State v. McCaffery, 16 Mont. 38; 40 Pac. 61. The proper construction of the words "probable cause" may be facts embodied in a complaint which charges the offense on information and belief.

State v. Brantly, 20 Mont. 176; 50 Pac. 411. An information charging a person with the commission of an offense was not verified, but the defendant en-

tered a plea of not guilty and was convicted of murder in the second degree, and thereby waived the protection afforded by this section.

State v. Clancy, 20 Mont. 501; 52 Pac. 268. The requirement of this section is, *prima facie*, complied with when an information charging a public offense is filed by the county attorney; and such

an information is, *prima facie*, the statement of probable cause under oath, equally with an indictment presented on the oath of grand jurors.

State v. Shafer, 26 Mont. 15; 66 Pac. 464. The defendant was convicted of the crime of murder in the first degree. The information was verified by the county attorney upon his information and belief, and filed by leave of court upon a motion in writing not verified. The written motion made by the county attorney for leave to file the information need not be supported by oath, and the facts constituting a formal charge need not be set forth with technical accuracy.

State v. Court, 27 Mont. 444; 71 Pac. 603. The legislature in section 1810 of the Code of Civil Procedure has given a

construction to this section defining the circumstances under which the inspection of the private papers and documents of one party in an action by another party will not be deemed an unreasonable search.

State v. Court, 29 Mont. 368; 74 Pac. 1079. The constitutional guaranty contained in this section cannot be disregarded to satisfy litigants.

State v. Fuller, 34 Mont. 18; 85 Pac. 371. The defendant was charged with murder, and his shoes were taken against his consent and compared with the footprints leading from the place of the crime. The evidence thereof was admissible and defendant was not deprived of constitutional guaranties prohibiting unreasonable searches and seizures.

§ 8. Criminal offenses of which justice courts and municipal and other courts, inferior to the district courts, have jurisdiction, shall, in all courts inferior to the district court, be prosecuted by complaint. All criminal actions in the district court, except those on appeal, shall be prosecuted by information, after examination and commitment, by a magistrate, or after leave granted by the court, or shall be prosecuted by indictment without such examination or commitment, or without such leave of the court. A grand jury shall consist of seven persons, of whom five must concur to find an indictment.

A grand jury shall only be drawn and summoned when the district judge shall in his discretion consider it necessary, and shall so order.

State v. Ah Jim, 9 Mont. 167; 23 Pac. 76. An information charging defendant with the offense of murder committed before the admission of Montana as a state, and prior to any legislation under this section, was quashed. The clause of this section relating to the information did not execute itself and the legislative department must act before it could be carried into effect. The clause relating to the grand jury executes itself.

State v. King, 9 Mont. 450; 24 Pac. 266. Defendant was indicted by a grand jury of seven persons, drawn and summoned by order of the district judge. The order need not show the necessity therefor and it will be presumed that the judge considered his action necessary.

State v. Kingsly, 10 Mont. 537; 26 Pac. 1066. A party was convicted of a felony committed in the territory prior to the adoption of the constitution, and prosecuted by information. The accused should have been prosecuted through the intervention of a grand jury.

State v. Brett, 16 Mont. 360; 40 Pac. 873. Under this section, an information

may be filed after leave has been granted by the court without an examination and commitment by a magistrate. There must be an examination and commitment, or leave of court, but both steps are not required.

State v. Bowser, 21 Mont. 134; 53 Pac. 179.

State v. Morris, 22 Mont. 3; 55 Pac. 361.

State v. Spotted Hawk, 22 Mont. 43; 55 Pac. 1027. A defendant is not entitled to be committed by a magistrate before he is informed against, and the information need not show on its face that it was filed by leave of court.

State v. Little Whirlwind, 22 Mont. 426; 56 Pac. 820. This section is not an abridgment of the privileges and immunities of citizens.

State v. Court, 24 Mont. 35; 60 Pac. 494. A contempt of court is not a criminal offense to be prosecuted as laid down in this section.

State v. Judges, 30 Mont. 198; 76 Pac. 11.

§ 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work cor-

ruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

§ 10. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

In re Shannon, 11 Mont. 72; 27 Pac. 354. The constitutional freedom of speech mentioned in this section includes the right to discuss matters pertaining to courts, or the practice therein, which have no tendency to affect the merits or result of cases pending.

In re MacKnight, 11 Mont. 138; 27 Pac. 337.

State v. Faulds, 17 Mont. 145; 42 Pac. 287. This section secures the largest liberty to the press and imposes responsibilities and is not violated by section 293 of the Penal Code, making the publication of a false and grossly inaccurate report of the proceedings of any court punishable both as a contempt and a misdemeanor.

Murray v. Heinze, 17 Mont. 365; 42 Pac. 1061. The jury have no right to determine the law in any other case.

"*Expressio unius est exclusio alterius.*" King v. Lincoln, 26 Mont. 161; 66 Pac. 838. In prosecutions for libel the jury are judges of the law as well as the facts.

Paxton v. Woodward, 31 Mont. 216; 78 Pac. 219. While the jury have the power to determine the law and facts, it is the duty of the court to give to the jury correct instructions, and an erroneous declaration of the legal principles involved to the prejudice of a party is cause for reversal.

State v. Koch, 33 Mont. 501; 85 Pac. 275.

§ 11. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunities shall be passed by the legislative assembly.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

State Bank v. Barret, 25 Mont. 119; 63 Pac. 1032. An agreement was entered into by the state and a party for the construction of a building for the school of mines under a statute allowing interest on registered warrants. The legislature by an act approved March 8, 1897, repealed the law concerning the interest, and thereby impaired the obligation of a contract, and the holder of a warrant issued under the agreement is entitled to interest thereon.

Stanford v. Coram, 28 Mont. 292; 72 Pac. 655. A judgment is in the nature of a contract, but it is not a contract

within the meaning of this section, and a statute changing the rate of interest which a judgment shall bear after entry is not unconstitutional.

Bullard v. Smith, 28 Mont. 396; 72 Pac. 762. This section contains the prohibitions in the constitution against retrospective legislation, and the legislature is free to pass any retrospective laws which do not violate the obligations of contracts or interfere with vested rights.

Allen v. Ajax M. Co., 30 Mont. 490; 77 Pac. 47. The act passed in 1899, page 113, authorizing the directors of a mining corporation to sell its property does not impair the obligation of contracts and is valid.

§ 12. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

§ 13. The right of any person to keep or bear arms in defense of his own home, person and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

State v. McHatton, 15 Mont. 159; 38 Pac. 711. Where a railroad company pays a sum into court, on the award of damages by commissioners as compensation for a right of way for railroad purposes, this sum is to be regarded as a "just compensation," though the owner has appealed from the award.

State v. Deer Lodge, 19 Mont. 582; 49 Pac. 147. The county commissioners of Deer Lodge County vacated a public road and did not pay any damages to the owners of land through which the road passes. There was no taking of private property for public use.

Less v. Butte, 28 Mont. 31; 72 Pac. 141. This section is mandatory, prohibitory and self executing. An owner of land in an incorporated city is entitled to compensation for damages caused

by changing the grade of a street on which his property abuts. This section is drafted in broad language to prevent an unjust exercise of the power of eminent domain.

State v. Court, 28 Mont. 544; 73 Pac. 236. An examination of a lode mining claim under section 1314, Code of Civil Procedure, is not in contravention of this section prohibiting the damaging of private property without just compensation to the owner.

State v. Court, 30 Mont. 219; 76 Pac. 210. The district court has the power to compel a defendant, upon the payment of the reasonable cost, to lower and hoist the agents of the plaintiff into and from the underground workings of a lode mining claim, while engaged in the inspection thereof.

§ 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution or other beneficial use and the right of way over the lands of others, for all ditches, drains, flumes, canals and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount together with the expenses of the proceeding shall be paid by the person to be benefited.

State v. Court, 14 Mont. 476; 37 Pac. 7. This section does not abrogate the provisions of general laws, granting to the owners of a mining claim a right of way across the claim of others, and providing for the assessment of damages of commissioners, but modifies the laws by eliminating the commissioners and substituting a jury.

B. A. & P. Railway v. Montana U. Railway, 16 Mont. 529; 41 Pac. 240.

Ellinghouse v. Taylor, 19 Mont. 462; 48 Pac. 757. The phrase "other beneficial use" includes in the term "public use," the use of water to irrigate a particular tract of agricultural land, or work a particular mine, as well as the use of

water to irrigate a number of tracts of land, or work a number of mines owned by different persons.

Smith v. Denniff, 24 Mont. 22; 60 Pac. 399. The use of appropriated water is made a public use.

Helena v. Rogan, 26 Mont. 475; 68 Pac. 802. The use of water to irrigate a farm under the water right law is a public use.

Helena P. Co. v. Spratt, 35 Mont. 125; 88 Pac. 775. The taking of land to flood it, rendered necessary by the construction of a dam for generating electric power to be sold to industrial enterprises and the public, is a public use.

§ 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

State v. Lee, 13 Mont. 249; 33 Pac. 690. Material evidence was produced against defendant from a witness who related his recollection of what the prosecuting witness had testified on the preliminary hearing. The defendant is en-

titled to meet the witnesses against him face to face, and the admission of the testimony was illegal.

State v. Conrow, 13 Mont. 553; 35 Pac. 241. Where defendant has been tried twice before the expiration of the

second term after the filing of the information, and the state prosecutes an appeal from an order granting him a new trial after a conviction on the second trial, and during the pendency of this appeal, two terms elapsed without another trial, defendant is not denied the speedy trial guaranteed him.

State v. Geddes, 22 Mont. 87; 55 Pac. 925. The constitutional rights guaranteed to the accused to demand the nature and cause of the accusation, are not violated by the statute permitting an accusation against one as principal who is in fact an agent, for the reason that the old distinction between principal and accessory before the fact was arbitrary.

In re Wellcome, 23 Mont. 259; 58 Pac. 711. A disbarment proceeding is not a criminal prosecution, and this section declaring the right of the accused to meet the witnesses against him face to face is inapplicable, and depositions can be taken on the application of the attorney general.

State v. Mott, 29 Mont. 297; 74 Pac. 729. "An impartial jury" must be composed of twelve impartial men. One juror, who is incompetent because of actual bias entertained by him against the accused, and conceals such incom-

petency on his *voir dire*, vitiates the jury* as a whole.

State v. Tully, 31 Mont. 369; 78 Pac. 761. Criminal actions must be tried in the county where the offense was committed.

State v. Koch, 33 Mont. 490; 85 Pac. 272. Defendant was convicted of voluntary manslaughter. He pleaded "not guilty" to an information charging the crime of murder. An instruction that the jury "cannot find him not guilty" is in contravention of the right of defendant to have the question of his guilt or innocence determined by a jury.

The word "trial" embraces all proceedings in a criminal prosecution after the issues are made up, down to and including the rendition of the verdict.

The guaranty that the accused in all criminal prosecutions shall have the right to a trial by jury includes misdemeanors as well as felonies.

State v. Beesskove, 34 Mont. 50; 85 Pac. 377. The local jurisdiction of a crime is in the county where it is committed, and the charge must show that fact. The defendant is entitled to know the cause of the accusation so that he may prepare his defense.

§ 17. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner prescribed by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof. Any deposition authorized by this section may be received as evidence on the trial, if the witness shall be dead or absent from the state.

§ 18. No person shall be compelled to testify against himself, in a criminal proceeding, nor shall any person be twice put in jeopardy for the same offense.

State v. Keerl, 33 Mont. 509; 85 Pac. 863. Defendant was charged with murder, tried three times and found guilty of manslaughter at the third trial. On the second trial the jury disagreed and were discharged. At the third trial, the plea of once in jeopardy was interposed on the ground that the jury had been discharged at the second trial when no necessity existed therefor. The disagreement of a jury and their consequent discharge do not bring defendant within

the provision that no person shall be twice put in jeopardy for the same offense.

State v. Fuller, 34 Mont. 18; 85 Pac. 371. The clause declaring that no person shall be compelled to testify against himself does not prohibit the use of evidence obtained by taking the shoes of defendant, charged with murder, with or without his consent, and comparing them with footprints leading from the place of the crime.

§ 19. All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.

State v. Lagoni, 30 Mont. 479; 76 Pac. 1046.

§ 20. Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

State v. Lagoni, 30 Mont. 479; 76 Pac. 1046.

§ 21. The privilege of the writ of habeas corpus shall never

be suspended, unless in case of rebellion, or invasion, the public safety require it.

§ 22. The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

§ 23. The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases and in all criminal cases not amounting to felony, upon default of appearance or by consent of the parties expressed in such manner as the law may prescribe, a trial by jury may be waived, or a trial had by any less number of jurors than the number provided by law. A jury in a justice's court both in civil cases and in cases of criminal misdemeanor shall consist of not more than six persons. In all civil actions and in all criminal cases not amounting to felony, two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all of such jury concurred therein.

State v. Kennie, 24 Mont. 56; 60 Pac. 593. Under this section declaring the right of trial by jury shall be secured to all, the party complained of in a proceeding before a justice of the peace, to compel him to give security to keep the peace, is not entitled to a jury trial. No such right existed when the constitution was adopted and the right has not been extended to any case in which it did not then exist.

Finch v. Kent, 24 Mont. 279; 61 Pac. 658. This section does not enlarge the right to a jury trial and does not extend this right to suits within the exclusive jurisdiction of chancery when the constitution was adopted.

M. O. P. Co. v. B. & M. Co., 27 Mont. 306; 70 Pac. 1119. The parties in an action to determine an adverse claim to an interest in real property were not entitled to a jury trial prior to the adoption of the constitution; and a defendant in an action to try an adverse

claim to a lode mining claim under the same statute, re-enacted subsequent to the constitution, is not entitled to have the issues submitted to a jury.

Chessman v. Hale, 31 Mont. 535; 79 Pac. 256. The right of trial by jury, as it existed at the time of the adoption of the constitution, still exists and cannot be taken away by legislative enactment.

Id. 590; 79 Pac. 258. This section, in effect, *commands* that a jury trial, if waived, shall be waived in a certain manner, and *prohibits* its being waived in any other manner.

Id. 591; 79 Pac. 258. A party to an action is not under any obligation to demand a trial by jury when that right is given him by the constitution.

Spencer v. Spencer, 31 Mont. 639; 79 Pac. 322.

State v. Koch, 33 Mont. 496; 85 Pac. 274.

§ 24. Laws for the punishment of crime shall be founded on the principles of reformation and prevention, but this shall not affect the power of the legislative assembly to provide for punishing offenses by death.

§ 25. Aliens and denizens shall have the same right as citizens to acquire, purchase, possess, enjoy, convey, transmit and inherit mines and mining property, and milling, reduction, concentrating and other works, and real property necessary for or connected with the business of mining and treating ores and minerals: *Provided*, that nothing herein contained shall be construed to infringe upon the authority of the United States to provide for the sale or disposition of its mineral and other public lands.

§ 26. The people shall have the right peaceably to assemble

for the common good, and to apply to those invested with the powers of government for redress of grievances by petition or remonstrance.

§ 27. No person shall be deprived of life, liberty or property without due process of law.

State v. Ah Jim, 9 Mont. 171; 23 Pac. 77.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

State v. Bernheim, 19 Mont. 514; 49 Pac. 442.

Hinds v. Wilcox, 22 Mont. 11; 55 Pac. 358.

See note to section 3 of this article.

B. & B. Co. v. M. O. P. Co., 25 Mont. 68; 63 Pac. 826.

See note to section 3 of this article.

State v. Clancy, 30 Mont. 541; 77 Pac. 316. A party to an action is not deprived of life, liberty or property by the

fact that he cannot have his cause tried before a particular judge; and a statute, providing for the disqualification of district judges on the filing of an affidavit of prejudice, without requiring notice of the filing thereof to be given, is not in violation of this section, and a litigant is not deprived of his property without due process of law.

State v. Court, 33 Mont. 532; 85 Pac. 368. The phrase "due process of law" includes notice and a hearing before judgment; and a notice of the filing of a memorandum of costs must be given to the person liable therefor.

§ 28. There shall never be in this state either slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted.

§ 29. The provisions of this constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

State v. Ah Jim, 9 Mont. 172; 23 Pac. 77.

State v. Hickman, 9 Mont. 379; 23 Pac. 741.

State v. Tooker, 15 Mont. 14; 37 Pac. 842. Section 9 of Article XIX, of this constitution, requiring the secretary of state to publish a proposed constitutional amendment for three months prior to the next general election is mandatory, and a non-compliance therewith renders the adoption of the proposed amendment nugatory.

Palmer v. Helena, 19 Mont. 68; 47 Pac. 212.

Durfee v. Harper, 22 Mont. 363; 56 Pac. 585.

Mutual L. I. Co. v. Martien, 27 Mont. 439; 71 Pac. 471.

In re Weston, 28 Mont. 212; 72 Pac. 514. The declarations of the constitution with reference to the subjects upon which it assumes to speak, shall be conclusive upon the legislature, and shall prevent the enactment of any law, which

has for its purpose the extension or limitation of the powers which are conferred by constitutional provisions.

N. W. I. Co. v. L. & C. Co., 28 Mont. 497; 72 Pac. 985. The provisions of the constitution providing for the assessment and taxation of all the property of corporations situated within this state are mandatory.

State v. Weston, 29 Mont. 129; 74 Pac. 417. The rule prescribed in this section applies to all parts of the constitution.

State v. McKinney, 29 Mont. 381; 74 Pac. 1096. The courts, holding that the legislature is a co-ordinate branch of the government, and its action, if fair, should be sustained, give this section a liberal construction, so as to not interfere with or impede proper legislative functions.

State v. Koch, 33 Mont. 496; 85 Pac. 273.

State v. Court, 35 Mont. 53; 88 Pac. 564.

§ 30. The enumeration in this constitution of certain rights, shall not be construed to deny, impair or disparage others retained by the people.

§ 31. No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace or the suppression of domestic violence, except upon the application of the legislative assembly or of the governor when the legislative assembly cannot be convened.

ARTICLE IV.

DISTRIBUTION OF POWERS.

§ 1. The powers of the government of this state are divided

into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

State v. Jackson, 9 Mont. 519; 24 Pac. 215. A county attorney may hold the office of notary public, and an affidavit taken before a notary public, who is the county attorney, can be used by the state on a motion for a new trial.

State v. Smith, 23 Mont. 44; 57 Pac. 449. This article does not prevent the courts from controlling by mandamus the exercise by the governor of the state of a ministerial duty.

Jordan v. Andrus, 26 Mont. 39; 66

Pac. 502. It is not lawful for any department, or officer thereof, to interfere with the power of any other department.

In re Weston, 28 Mont. 219; 72 Pac. 517. The orderly disposition of the business of the state requires the faithful observance of this article; and the legislature cannot impose upon the Supreme Court, or its justices, the performance of an act not judicial in its character, but purely ministerial or executive.

ARTICLE V.

LEGISLATIVE DEPARTMENT.

§ 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives; but the people reserve to themselves power to propose laws, and to enact or reject the same at the polls except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in Article V, Section 26, of this constitution, independent of the legislative assembly; and also reserve power at their own option, to approve or reject at the polls, any act of the legislative assembly, except as to laws necessary for the immediate preservation of the public peace, health or safety, and except as to laws relating to appropriations of money, and except as to laws for the submission of constitutional amendments, and except as to local or special laws, as enumerated in Art. V; Sec. 26, of this constitution. The first power reserved by the people is the initiative and eight per cent of the legal voters of the state shall be required to propose any measure by petition; provided, that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition eight per cent of the legal voters in such county, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state, not less than four months before the election at which they are to be voted upon.

The second power is the referendum, and it may be ordered either by petition signed by five per cent of the legal voters of the state; provided, that two-fifths of the whole number of the counties of the state must each furnish as signers of said petition five per cent of the legal voters in such county, or, by the legislative assembly as other bills are enacted.

Referendum petitions shall be filed with the secretary of state, not later than six months after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people by the legislative assembly or by initiative referendum petitions.

All elections on measures referred to the people of the state shall be had at the biennial regular general election, except when the legislative assembly, by a majority vote, shall order a special election. Any measure referred to the people shall still be in full force and effect unless such petition be signed by fifteen per cent of the legal voters of a majority of the whole number of the counties of the state, in which case the law shall be inoperative until such time as it shall be passed upon at an election, and the result has been determined and declared as provided by law. The whole number of votes cast for governor at the regular election last preceding the filing of any petition for the initiative or referendum shall be the basis on which the number of legal petitions and orders for the initiative and for the referendum shall be filed with the secretary of state; and in submitting the same to the people, he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor. The enacting clause of every law originated by the initiative shall be as follows:

"Be it enacted by the people of Montana."

This section shall not be construed to deprive any member of the legislature of the right to introduce any measure.

Section 1 is given as amended by act approved March 2, 1905 (Acts 1905, Ch. 61), which was declared to be in force by proclamation by the Governor December 7, 1906.

§ 2. Senators shall be elected for the term of four years, and representatives for the term of two years, except as otherwise provided in this constitution.

§ 3. No person shall be a representative who shall not have attained the age of twenty-one years, or a senator who shall not have attained the age of twenty-four years, and who shall not be a citizen of the United States, and who shall not (for at least twelve months next preceding his election) have resided within the county or district in which he shall be elected.

§ 4. The legislative assembly of this state, until otherwise provided by law, shall consist of sixteen members of the senate, and fifty-five members of the house of representatives.

State v. Kenney, 10 Mont. 413; 25 Pac. 1023.

It shall be the duty of the first legislative assembly to divide the state into senatorial and representative districts, but there shall be no more than one senator from each county. The senators shall be divided into two classes. Those elected from odd

numbered districts shall constitute one class, and those elected from even numbered districts shall constitute the other class; and when any additional senator shall be provided for by law his class shall be determined by lot.

One-half of the senators elected to the first legislative assembly shall hold office for one year, and the other half for three years; and it shall be determined by lot immediately after the organization of the senate, whether the senators from the odd or even numbered districts shall hold for one or three years.

§ 5. Each member of the first legislative assembly, as a compensation for his services shall receive six dollars for each day's attendance, and twenty cents for each mile necessarily traveled in going to and returning from the seat of government to his residence by the usually traveled route, and shall receive no other compensation, perquisite or allowance whatsoever.

No session of the legislative assembly, after the first, which may be ninety days, shall exceed sixty days.

After the first session, the compensation of the members of the legislative assembly shall be as provided by law; *provided*, that no legislative assembly shall fix its own compensation.

State v. Kenney, 9 Mont. 232; 23 Pac. 736. Sections 5 and 15 of this article guarantee certain rights, privileges and emoluments to persons occupying the office of legislator.

State v. Kenney, 10 Mont. 412; 25 Pac. 1023. Under sections 5 and 8 of this article the constitution fixed the compensation of members of the first legislative assembly and conferred upon that body the power to enact laws for the payment of its successors. These laws can be amended, but no legislative assembly can fix its compensation or in-

crease the salary or mileage of the members. The constitution contemplated that the first legislative assembly would enact a law providing for this exigency, but there was a failure in this regard. The second legislative assembly made an appropriation for the payment of its members at the rate fixed by the constitution as the compensation for members of the first legislative assembly. The second legislative assembly did not fix its compensation within the scope of these sections and the appropriation was valid.

§ 6. The legislative assembly, (except the first) shall meet at the seat of government at twelve o'clock, noon, on the first Monday of January, next succeeding the general election provided by law, and at twelve o'clock, noon, on the first Monday of January, of each alternate year thereafter, and at other times when convened by the governor.

The term of service of the members thereof shall begin the next day after their election, until otherwise provided by law; *provided*, that the first legislative assembly shall meet at the seat of government upon the proclamation of the governor after the admission of the state into the union, upon a day to be named in said proclamation, and which shall not be more than fifteen nor less than ten days after the admission of the state into the union.

§ 7. No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under

the United States or this state, shall be a member of either house during his continuance in office.

§ 8. No member of either house, shall, during the term for which he shall have been elected, receive any increase of salary or mileage under any law passed during such term.

See note to section 5 of this article. express restriction upon the powers of
Lloyd v. Silver Bow County, 11 Mont. the legislative assembly.
412; 28 Pac. 455. This section is an

§ 9. The senate shall, at the beginning and close of each regular session, and at such other times as may be necessary, elect one of its members president, *pro tempore*. The house of representatives shall elect one of its members speaker. Each house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

State v. Kenney, 9 Mont. 232; 23 Pac. 736. The power to try the ultimate right of a person claiming to be a member of the legislative assembly is in the house where he claims a seat.

§ 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner and under such penalties as each house may prescribe.

§ 11. Each house shall have power to determine the rules of its proceedings, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribe or private solicitation, and with the concurrence of two-thirds, to expel a member, and shall have all other powers necessary for the legislative assembly of a free state.

A member expelled for corruption shall not thereafter be eligible to either house of the legislative assembly; and punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

§ 12. Each house shall keep a journal of its proceedings and may, in its discretion, from time to time, publish the same, except such parts as require secrecy, and the ayes and noes on any question, shall, at the request of any two members, be entered on the journal.

§ 13. The sessions of each house and of the committees of the whole shall be open unless the business is such as requires secrecy.

§ 14. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

§ 15. The members of the legislative assembly, shall, in all cases, except treason, felony, violation of their oath of office and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and

returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

State v. Kenney, 9 Mont. 232; 23 See note to section 5 of this article. Pac. 736.

§ 16. The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

§ 17. The governor, and other state and judicial officers, except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit under the laws of the state. The party whether convicted or acquitted shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

§ 18. All officers not liable to impeachment shall be subject to removal for misconduct or malfeasance in office, in such manner as may be provided by law.

State v. Acton, 31 Mont. 42; 77 Pac. 301.

§ 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose.

§ 20. The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly, of the State of Montana."

§ 21. No bill for the appropriation of money, except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced.

§ 22. No bill shall be considered or become a law unless referred to a committee, returned therefrom and printed for the use of the members.

§ 23. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

Hotchkiss v. Marion, 12 Mont. 225; 29 Pac. 823. The Act of March 4, 1891, entitled, "An Act to amend Sections 790, 795, 796 and 808 of the fifth division of the Compiled Statutes of Montana," relates to one general subject and is not

obnoxious to this section, prohibiting the passage of a law containing more than one subject, which shall be expressed in its title.

State v. Mitchell, 17 Mont. 75; 42 Pac. 102. Chapter IX of the proposed

Penal Code of 1895, entitled "Gaming," and prohibiting the same, was stricken out and the legislature re-enacted prior laws authorizing certain gambling games in lieu thereof, which were annexed to Chapter VIII of the Penal Code, entitled "Lotteries," as sections 357-369a; the Act of February 28, 1895, entitled "An Act to amend Chapter IX of the Penal Code of the State of Montana," contained provisions striking out said sections 357-369a and substituted a section prohibiting all gambling. The act of February 28, 1895, is in conflict with this section. There was no chapter IX of the Penal Code concerning gambling to be amended and there were other chapters, numbered IX in said code pertaining to different subjects; and there was nothing in the title of this act to indicate to which one, if any, of the three chapters it was an amendment.

State v. Bernheim, 19 Mont. 518; 49 Pac. 443. The act entitled "An act to regulate the sale and redemption of transportation tickets of common carriers" provides for the appointment of agents to sell tickets and the issuance of a license, and prescribes penalties for the violation of parts of the act. The penalties need not be included in the title and the subject of the act is clearly expressed.

Snook v. Clark, 20 Mont. 233; 50 Pac. 719. The act, approved March 2, 1891, entitled "An Act requiring railroad companies to pay for damages to stock" provides that railroad companies must fence their track or respond in damages. The title does not refer to fences or penalties. The title complies with this section.

State v. Page, 20 Mont. 242; 50 Pac. 721. An act approved March 4, 1897, was entitled "An Act repealing Sections 470 and 472, Article IX, Chapter III, Title I, Part III, of the Political Code, relating to the appointment of the State Land Agent and his annual salary." These sections were amended and not repealed. The misuse of the word "repealing" in the title does not overthrow the act as the other words of the title point out the sections, chapter, title, code and subject to be affected by the provisions of the Act.

State v. Long, 21 Mont. 29; 52 Pac. 646. The title of an act is, "An act to amend sections 1770 and 1782, inclusive, * * * of the Political Code. * * *" The omission to specifically enumerate the sections between sections 1770 and 1782, covered by the word "inclusive," is not fatal. The title fairly apprised one of the subject of the legislation and that the entire number of sections of the Code from 1770 to 1782, inclusive, were to be amended.

Home B. A. v. Nolan, 21 Mont. 214; 53 Pac. 741. The Act of March 4, 1897, entitled, "An Act to provide for the organization * * * of building and loan associations * * *" is a general revision of the laws relating to one subject embraced therein and provides that corporations then existing should not be affected by the law unless they elected to come within its provisions. The omission in the title of this proviso did not nullify the act.

Dowty v. Pittwood, 23 Mont. 117; 57

Pac. 728. The title of the act of March 7, 1895, entitled "An act to amend sections 364 and 365 of the Fifth Division of the Compiled Statutes of Montana and the amendments thereto, approved September 14, 1887," relating to the qualifications of mayors and aldermen and declaring the same, does not conflict with this section.

State v. Anaconda M. Co., 23 Mont. 500; 59 Pac. 855. It is not necessary that a title shall embody the exact limitations or qualifications in the bill, germane to the intent of the legislature, if the general subject of the measure is clearly expressed in the title. The Act of March 1, 1897, entitled "An Act to amend Section 705 of Title X of the Penal Code of the State of Montana, to have the cages in all mines cased in," makes it unlawful for any corporation to sink or work through any vertical shaft where mining cages are used to a greater depth than 300 feet, unless such shaft shall be provided with an iron-bonneted safety cage. The subject matter of the act is sufficiently expressed in the title.

State v. Courtney, 27 Mont. 384; 71 Pac. 309. The act, approved March 6, 1897, entitled "An Act to amend Sections 4063, 4064, 4065, 4068 and 4083 of the Political Code of Montana, and to add to Article II, Chapter XII, Title X, Part III, of the Political Code, a section to be numbered 4084 regarding licenses," contains provisions relating to licenses of wholesale and retail liquor dealers. The subject of the act is clearly expressed in its title. If any subject is embraced in an act, which is not expressed in its title, such act is void only as to so much as is not so expressed; and this section should receive a liberal construction.

Western Ranches v. Custer Co., 28 Mont. 284; 72 Pac. 661. The title of the act approved March 18, 1895, entitled "An Act providing for unlawful levy and collection of public revenue" comes within the purview of this section.

State v. Brown, 29 Mont. 179; 74 Pac. 366. Chapter LVIII of the Laws of 1903, approved March 4, 1903, amending the game laws is in conflict with this section. The subject thereof is not clearly expressed in the title and the intent of the legislature cannot be inferred therefrom.

State v. McKinney, 29 Mont. 380; 74 Pac. 1096. The purpose of this section is to advise members of the legislature of the character of proposed legislation, and prevent the enactment of laws surreptitiously. The title is generally sufficient if the body of the act treats only, directly or indirectly, of the subjects mentioned in the title, and of other subjects germane thereto, but details need not be mentioned. The act approved March 7, 1903, entitled "An act to create the office of meat and milk inspector for the State of Montana, and prescribing his powers and duties and compensation," imposes a license fee on persons selling milk and authorizes the collection thereof by the inspector. The subject of the act is clearly expressed in its title.

Yegen v. Commissioners, 34 Mont. 83;

85 Pac. 741. Sections 11, 25 and 26 of the act approved March 15, 1901, entitled "An act creating a state board of health, defining its powers and duties and providing for the compensation of its officers, and providing for the enforcement of the rules and regulations of said board," are unconstitutional. The body of the act confers upon county boards of health power to declare quar-

antine against contagious diseases, and confine persons affected with such diseases in detention hospitals, and erect hospitals, and these subjects are not clearly expressed in the title.

In re Terrett, 34 Mont. 331; 86 Pac. 267. A penalty clause may be incorporated in an act without being designated in the title.

§ 24. No bill shall become a law except by a vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal.

Palatine Co. v. N. P. R. Co., 34 Mont. 278; 85 Pac. 1033. An act relating to the limitation of time within which actions may be brought was approved March 11, 1901. It appeared from the

journal that there is not any record of "the names of those voting" in the Senate on the bill. The bill did not become a law.

§ 25. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be re-enacted and published at length.

State v. Mitchell, 17 Mont. 75; 42 Pac. 102.

Dowty v. Pittwood, 23 Mont. 117; 57 Pac. 728.

King v. Elling, 24 Mont. 478; 62 Pac. 786. This section does not apply to an act which does not purport to be an amendment to or a revision of a prior act. Many statutes were amended by merely striking out or adding words or phrases, the amendatory statute giving no intimation of the language of the statute so amended. To obviate the confusion consequent upon that mode of

amendment, this section requires that the statute as amended shall be re-enacted and published at length.

Palatine I. Co. v. N. P. R. Co., 34 Mont. 275; 85 Pac. 1033. The laws of the third legislative assembly, 1893, are not amendments to the code, but the laws of the land at the time of the passage of the codes, and continued in force. This section providing that no bill shall be amended by title only does not apply to the act approved March 9, 1893, relating to the limitation of time within which actions may be brought.

§ 26. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: For granting divorces; laying out, opening, altering or working roads or highways; vacating roads, town plats, streets, alleys or public grounds; locating or changing county seats; regulating county or township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates or constables; changing the rules of evidence in any trial or inquiry; providing for changes of venue in civil or criminal cases; declaring any person of age; for limitation of civil actions, or giving effect to informal or invalid deeds; summoning or impaneling grand or petit juries; providing for the management of common schools; regulating the rate of interest on money; the opening or conducting of any election or designating the place of voting; the sale or mortgage of real estate belonging to minors or others under disability; chartering or licensing ferries or bridges or toll roads; chartering banks, insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; creating, increasing or decreasing fees, per centages or allowances of public officers; changing the law of descent; granting to any corporation, association or individual

the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; for the punishment of crimes; changing the names of persons or places; for the assessment or collection of taxes; affecting estates of deceased persons, minors or others under legal disabilities; extending the time for the collection of taxes; refunding money paid into the state treasury; relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein; exempting property from taxation; restoring to citizenship persons convicted of infamous crimes; authorizing the creation, extension or impairing of liens; creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts; or authorizing the adoption or legitimation of children. In all other cases where a general law can be made applicable, no special law shall be enacted.

Lloyd v. Silver Bow County, 11 Mont. 412; 28 Pac. 454. This section is an express restriction upon the powers of the legislative assembly.

Hotchkiss v. Marion, 12 Mont. 224; 29 Pac. 823. The proviso to Section 794, fifth division of the Compiled Statutes, enacted by the legislative assembly of the territory, which excepts the county of Missoula from the provisions of the law fixing the rate of interest on county warrants, is in conflict with this section of the constitution prohibiting local or special laws "regulating county * * * affairs," and "the rate of interest on money."

Holliday v. Sweet Grass County, 19 Mont. 364; 48 Pac. 553. The act of the legislature creating the county of Sweet Grass took effect March 5, 1895. The new county was formed of territory previously included in three counties. The creation of a new county by a special act is not forbidden by this section, providing that "The legislative assembly shall not pass local or special laws * * * regulating county * * * affairs."

State v. Long, 21 Mont. 30; 52 Pac. 646. The act approved March 6, 1897, divides school districts into classes according to population and provides a system for the election of trustees. A particular method of supervision of an election, common to all districts of a certain class, does not make the act defining such supervision a special law.

Home B. & L. A. v. Nolan, 21 Mont. 215; 53 Pac. 742. A proviso that an

act, approved March 4, 1897, shall not affect any building and loan association heretofore organized under the laws of Montana, unless such association elects to come under its provisions, operates alike on all corporations and is valid. The proviso is neither local nor special and does not purport to charter an association.

State v. Coad, 23 Mont. 139; 57 Pac. 1095.

King v. Elling, 24 Mont. 475; 62 Pac. 785. The act authorizing any corporation, incorporated in the state for guarantying or becoming a surety on bonds to become a sole surety, without an affidavit showing qualifications, is not a special law regulating the practice in courts of justice, or granting to a corporation a special or exclusive privilege.

Sackett v. Thomas, 25 Mont. 235; 64 Pac. 504. The word "persons" in this section embraces all persons, whether natural or artificial. An act approved March 8, 1901, changed the name of the existing county of Deer Lodge to that of the county of Daly. This act was a local or special law "changing the name of * * * places," and was void.

In re O'Brien, 29 Mont. 537; 75 Pac. 197. The local option liquor law in the Political Code authorizes each county to hold elections to determine whether the sale of intoxicating liquors shall be licensed or prohibited therein. This law is not in conflict with this section prohibiting local or special legislation.

§ 27. The presiding officer of each house shall, in the presence of the house over which he presides, sign all the bills and joint resolutions passed by the legislative assembly immediately after their titles have been publicly read, and the fact of signing shall be at once entered upon the journal.

State v. Long, 21 Mont. 34; 52 Pac. 648. The enrolled bill approved March 6, 1897, bears the signatures of the presiding officer of each house, but the

journal omitted to show this fact. The presumption is that the bill was regularly passed.

§ 28. The legislative assembly shall prescribe by law, the

number, duties and compensation of the officers and employes of each house; and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employe elected or appointed in pursuance of law.

§ 29. No bill shall be passed giving any extra compensation to any public officer, servant or employe, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim made against the state without previous authority of law, except as may be otherwise provided herein.

Lloyd v. Silver Bow Co., 11 Mont. 412; 28 Pac. 454. This section is an express restriction upon the powers of the legislative assembly.

§ 30. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and binding and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly, and its committees shall be performed under contract, to be given to the lowest responsible bidder below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and state treasurer.

State v. Rickards, 16 Mont. 145; 40 Pac. 210. The state furnishing board let a contract to the Inter Mountain Publishing Company for printing the codes. The business manager of the Company, who received a fixed salary for his services and had no interest in the profits, was a member of the legislature when the law authorizing this contract was passed. This section providing that no member of any department of the government shall be interested in such contract was not violated.

State v. Hogan, 22 Mont. 389; 56 Pac. 819. There cannot be a valid contract

for state printing specified in this section without the approval of the governor and state treasurer.

State v. Smith, 23 Mont. 48; 57 Pac. 450. The duty of the governor and state treasurer to approve a contract for state printing let by the board of examiners involves judicial discretion and cannot be controlled by mandamus.

State v. Toole, 26 Mont. 29; 66 Pac. 499. Advertisements for proposals to furnish supplies are not public printing within the language or spirit of this section.

§ 31. Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emolument after his election or appointment: *Provided*, That this shall not be construed to forbid the legislative assembly from fixing the salaries or emoluments of those officers first elected or appointed under this constitution, where such salaries or emoluments are not fixed by this constitution.

State v. Hickman, 9 Mont. 374; 23 Pac. 741.

In re Dewar's Estate, 10 Mont. 442; 25 Pac. 1027.

Lloyd v. Silver Bow County, 11 Mont. 411; 28 Pac. 453. The legislature had the power to diminish the salary or emoluments of a sheriff elected in October, 1889, and statutes enacted in 1891,

reducing his compensation for the board of prisoners and mileage are valid.

Clark v. Silver Bow County, 17 Mont. 81; 42 Pac. 103.

State v. Long, 21 Mont. 33; 52 Pac. 647. If a section of the act, approved March 6, 1897, attempts to increase the salary of school trustees, elected prior to 1897, and who hold over, no other

parts of the law can be held invalid.

State v. Granite County, 23 Mont. 252; 58 Pac. 439. The legislative assembly is not prohibited by this section from adding duties to the office of county surveyor and providing compensation therefor, and thereafter taking away such duties and emoluments from a surveyor elected subsequently and before the last act was passed. The emoluments of a county surveyor, paid by fees or a per diem compensation, are not diminished by a statute, taking effect after his election, which relieves him of the obligation to perform certain duties and destroys the compensation therefor.

§ 32. All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills.

State v. Bernheim, 19 Mont. 514; 49 Pac. 442. The act regulating the sale and redemption of transportation tickets of common carriers, passed in 1893, and requiring every agent to pay to the secretary of state a license fee of one dollar, is in the nature of a

Scharrenbroich v. Lewis & Clark Co., 33 Mont. 256; 83 Pac. 483. A sheriff, elected in November, 1904, was allowed mileage for the transportation of persons to the state prison, reform school and insane asylum. An act, approved March 3, 1905, allowed sheriffs for such transportation actual traveling expenses. This section is not violated and applies to a sheriff elected prior to its passage.

State v. Board, 34 Mont. 430; 87 Pac. 451. The term "law," in this section does not refer to amendments to the constitution, but relates to laws enacted by the legislative assembly.

police regulation and is not for revenue purposes. The bill originated in the senate and does not violate this section, providing that all bills for raising revenue shall originate in the house of representatives.

§ 33. The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

State v. Hickman, 11 Mont. 546; 29 Pac. 94. The term "public debt" in this section includes warrants as well as bonds.

§ 34. No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt.

State v. Hickman, 9 Montana 374; 23 Pac. 741. The constitution provides that the salary of the secretary of state shall be fixed at three thousand dollars per annum. The state treasurer refused to pay a warrant drawn on him by the state auditor in favor of the secretary of state for his quarterly salary on the ground that no appropriation had been made by law for the payment thereof. The provision of the constitution that the secretary of state shall receive said salary is an appropriation made by law and no act of the legislative assembly is necessary.

State v. Kenney, 9 Mont. 394; 24 Pac. 97.

State v. Hickman, 11 Mont. 546; 29

Pac. 94. Interest is payable upon a state warrant without an express appropriation by the legislative assembly for that purpose.

State v. Wright, 17 Mont. 571; 44 Pac. 92. This section does not prohibit the state treasurer from registering a warrant drawn for the *per diem* of a commissioner on a trust fund, over which the state exercises only such control as is consistent with the act of Congress of August 18, 1894, prescribing the conditions under which the United States issued a patent to the state of certain desert lands.

State v. Barret, 30 Mont. 205; 81 Pac. 351.

§ 35. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

§ 36. The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise,

or to levy taxes, or to perform any municipal functions whatever.

§ 37. No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

§ 38. The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

§ 39. No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

Board v. Story, 26 Mont. 520; 69 Pac.
58. A demand for taxes is a liability
created by statute; and the statute of
limitations operates against an action to

recover taxes by the state, or for the
use and benefit of the state, and is
not in conflict with this section.

§ 40. Every order, resolution or vote, in which the concurrence of both houses may be necessary, except on the question of adjournment, or relating solely to the transaction of the business of the two houses, shall be presented to the governor, and before it shall take effect be approved by him, or, being disapproved, be repassed by two-thirds of both houses, as prescribed in the case of a bill.

§ 41. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence in favor of or against any measure or proposition, pending or proposed to be introduced into the legislative assembly, in consideration or upon condition that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence, in favor of or against any other measure or proposition pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition pending or proposed to be introduced in such legislative assembly, or offer, promise or assent so to do, upon condition that any other member will give, or will promise or assent to give his vote or influence in favor of or against any other measure or proposition pending or proposed to be introduced in such legislative assembly, or in consideration that any other member hath given his vote or influence for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery; and any member of the legislative assembly, or person elected thereto, who shall be guilty of either such offenses, shall be expelled and shall not

thereafter be eligible to the legislative assembly, and on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

§ 42. Any person who shall directly or indirectly offer, give or promise any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the legislative assembly, to influence him in the performance of any of his official or public duties, shall be deemed guilty of bribery, and be punished in such manner as shall be provided by law.

§ 43. The offense of corrupt solicitation of members of the legislative assembly, or of public officers of the state, or of any municipal division thereof, and the occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

§ 44. A member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§ 45. When vacancies occur in either house the governor or the person exercising the functions of the governor shall issue writs of election to fill the same.

ARTICLE VI.

APPORTIONMENT AND REPRESENTATION.

§ 1. One representative in the congress of the United States shall be elected from the state at large, the first Tuesday in October, 1889, and thereafter at such times and places, and in such manner as may be prescribed by law. When a new apportionment shall be made by congress the legislative assembly shall divide the state into congressional districts accordingly.

§ 2. The legislative assembly shall provide by law for an enumeration of the inhabitants of the state in the year 1895, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law.

§ 3. Representative districts may be altered from time to time as public convenience may require. When a representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be. No county shall be divided in the formation of representative districts.

§ 4. Whenever new counties are created, each of said coun-

ties shall be entitled to one senator, but in no case shall a senatorial district consist of more than one county.

Sackett v. Thomas, 25 Mont. 240; 64 Pac. 506.

§ 5. The senatorial districts of the state shall be constituted and numbered as follows:

The county of Beaverhead shall constitute the First district, and be entitled to one senator.

The county of Madison shall constitute the Second district, and be entitled to one senator.

The county of Gallatin shall constitute the Third district, and be entitled to one senator.

The county of Jefferson shall constitute the Fourth district, and be entitled to one senator.

The county of Deer Lodge shall constitute the Fifth district, district, and be entitled to one senator.

The county of Missoula shall constitute the Sixth district, and be entitled to one senator.

The county of Lewis and Clarke shall constitute the Seventh district, and be entitled to one senator.

The county of Choteau shall constitute the Eighth district, and be entitled to one senator.

The county of Meagher shall constitute the Ninth district, and be entitled to one senator.

The county of Silver Bow shall constitute the Tenth district, and be entitled to one senator.

The county of Custer shall constitute the Eleventh district, and be entitled to one senator.

The county of Yellowstone shall constitute the Twelfth district, and be entitled to one senator.

The county of Dawson shall constitute the Thirteenth district, and be entitled to one senator.

The county of Fergus shall constitute the Fourteenth district, and be entitled to one senator.

The county of Park shall constitute the Fifteenth district, and be entitled to one senator.

The county of Cascade shall constitute the Sixteenth district, and be entitled to one senator.

§ 6. Until an apportionment of representatives be made in accordance with the provisions of this article, they shall be divided among the several counties of the state in the following manner:

The county of Beaverhead shall have two (2).

The county of Madison shall have two (2).

The county of Gallatin shall have two (2).

The county of Jefferson shall have three (3).

The county of Deer Lodge shall have seven (7).

The county of Missoula shall have five (5).
 The county of Lewis and Clarke shall have eight (8).
 The county of Choteau shall have two (2).
 The county of Meagher shall have two (2).
 The county of Silver Bow shall have ten (10).
 The county of Custer shall have two (2).
 The county of Yellowstone shall have one (1).
 The county of Fergus shall have two (2).
 The county of Park shall have two (2).
 The county of Cascade shall have two (2).
 The counties of Dawson and Cascade shall have one (1) jointly.
 The counties of Deer Lodge and Beaverhead shall have one (1) jointly.
 The counties of Jefferson and Gallatin shall have one (1) jointly.

ARTICLE VII.

EXECUTIVE DEPARTMENT.

§ 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor and superintendent of public instruction, each of whom shall hold his office for four years, or until his successor is elected and qualified, beginning on the first Monday of January next succeeding his election, except that the terms of office of those who are elected at the first election, shall begin when the state shall be admitted into the union, and shall end on the first Monday of January A. D. 1893. The officers of the executive department, excepting the lieutenant governor, shall during their terms of office reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed in this constitution and by the laws of the state. The state treasurer shall not be eligible to his office for the succeeding term.

State v. Hickman, 9 Mont. 374; 23 Pac. 741.

State v. Court, 22 Mont. 27; 55 Pac. 916. The attorney general is required by this section to perform such duties as

are prescribed in the constitution and laws of the state.

State v. Acton, 31 Mont. 42; 77 Pac. 301.

§ 2. The officers provided for in section 1 of this article, shall be elected by the qualified electors of the state at the time and place of voting for members of the legislative assembly, and the persons respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislative assembly, at its next regular session, shall forthwith by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by

law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

State v. Acton, 31 Mont. 42; 77 Pac. 301.

§ 3. No person shall be eligible to the office of governor, lieutenant governor, or superintendent of public instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five years, nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the state, or territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States, and have resided within the state or territory two years next preceding his election.

§ 4. Until otherwise provided by law, the governor, secretary of state, state auditor, treasurer, attorney general and superintendent of public instruction, shall quarterly, as due, during their continuance in office, receive for their services compensation, which is fixed as follows:

Governor, five thousand dollars per annum;

Secretary of state, three thousand dollars per annum;

Attorney general, three thousand dollars per annum;

State treasurer, three thousand dollars per annum;

State auditor, three thousand dollars per annum;

Superintendent of public instruction, two thousand five hundred dollars per annum.

The lieutenant-governor shall receive the same per diem as may be prescribed by law for the speaker of the legislative assembly, to be allowed only during the sessions of the legislative assembly.

The compensation enumerated shall be in full for all services by said officers respectively rendered in any official capacity or employment whatever during their respective terms of office, and the salary of no official shall be increased during his term of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use, but all fees fixed by law for the performance by any officer of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. No officer mentioned in this section shall be eligible to, or hold any other public office, except member of the state board of education during his term of office.

State v. Hickman, 9 Mont. 373; 23 Pac. 741.

Lloyd v. Silver Bow County, 11 Mont. 413, 415; 28 Pac. 454.

§ 5. The supreme executive power of the state shall be vested

in the governor, who shall see that the laws are faithfully executed.

The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

§ 7. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occur in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of secretary of state, state auditor, state treasurer, attorney general or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified.

In re Terrett, 34 Mont. 333; 86 Pac. 268. The power to appoint or delegate the appointing power is reserved to the people, acting through the legislature, in every instance, excepting those enumerated in the constitution. Bounty inspectors are not officers, whose appoint-

ment is "otherwise provided for" in this section, and the legislature had the power by the act of March 6, 1903, to delegate the selection of three stockgrowers in each county to appoint bounty inspectors to the district judges.

§ 8. The legislative assembly shall provide for a state examiner, who shall be appointed by the governor and confirmed by the senate. His duty shall be to examine the accounts of state treasurer, supreme court clerks, district court clerks and all county treasurers and treasurers of such other public institutions as may be prescribed by law, and he shall perform such other duties as the legislative assembly may prescribe. He shall report at least once a year and oftener if required to such officers as may be designated by the legislative assembly. His compensation shall be fixed by law.

Lloyd v. Silver Bow County, 11 Mont. 415; 28 Pac. 455.

§ 9. The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of this state: *Provided, however,* That before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the governor concerning the same shall be approved by a board, or a majority thereof, composed of the secretary of state, attorney general and state auditor, who shall be known as the board of pardons. The legislative assembly shall by law prescribe the sessions of said board, and regulate the pro-

ceedings thereof. But no fine or forfeitures shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said board after a full hearing in open session and until notice of the time and place of such hearing, and of the relief sought shall, have been given by publication in some newspaper of general circulation in the county where the crime was committed, at least once a week for two weeks. The proceedings and decisions of the board shall be reduced to writing, and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by them and filed, with all papers used upon the hearing, in the office of the secretary of state. The governor shall communicate to the legislative assembly, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same and the objections, if any, of any member of the board made thereto.

§ 10. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the beginning of each session, and from time to time, by message, give to the legislative assembly information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislative assembly a statement with vouchers of the expenditures of all moneys belonging to the state and paid out by him. He shall also at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state.

State v. Clancy, 30 Mont. 535; 77 Pac. 315. The utmost extent of the authority of the governor, so far as constructive

legislative work is concerned, is to recommend such measures as he shall deem expedient.

§ 11. He may on extraordinary occasions convene the legislative assembly by proclamation, stating the purposes for which it is convened, but when so convened, it shall have no power to legislate on any subjects other than those specified in the proclamation, or which may be recommended by the governor, but may provide for the expenses of the session and other matters incidental thereto. He may also by proclamation convene the senate

in extraordinary session for the transaction of executive business.

State v. Judges, 30 Mont. 201; 76 Pac. 13. The proclamation of the governor, convening the eighth legislative assembly in a second extraordinary session, was to accomplish general legislation, whereby bias and prejudice of district judges shall constitute a disqualification of such judges, and making suitable provision for the trial of cases in such event. No recommendations were made by the governor differing in any degree from the matters embraced in the proclamation, and the legislation was in accordance therewith.

State v. Clancy, 30 Mont. 534; 77 Pac. 315. The power of the legislature convened in extraordinary session is limited to the enactment of laws affecting those subjects only that are enumerated in the proclamation of the governor, or his message. The court must examine the proclamation to determine whether the legislation passed at such extraordinary session is germane to the subjects specified therein. The legislation referred to in the case of State v. Judges, *supra*, was germane to said proclamation as required by this section.

§ 12. Every bill passed by the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journal and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house it shall become a law notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. If any bill shall not be returned by the governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislative assembly shall by their adjournment prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislative assembly, unless approved by the governor within fifteen days after such adjournment. In case the governor shall fail to approve of any bill after the final adjournment of the legislative assembly it shall be filed, with his objections, in the office of the secretary of state.

§ 13. The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the manner following: If the legislative assembly be in session he shall within five days transmit to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 14. In case of the failure to qualify, the impeachment or

conviction of felony or infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

§ 15. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor, from any cause which applies to the governor, or when he shall hold the office of governor, then the president *pro tempore* of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

§ 16. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of felony or infamous crime, or disqualification from any cause, of both the governor and the lieutenant-governor, the duties of the governor shall devolve upon the president *pro tempore* of the senate until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled, and if the president *pro tempore* of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

§ 17. The first legislative assembly shall provide a seal for the state, which shall be kept by the secretary of state and used by him officially, and known as the great seal of the state of Montana.

§ 18. All grants and commissions shall be in the name and by the authority of the state of Montana, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

State v. Page, 20 Mont. 248; 50 Pac. 723. The commission of the state land agent was signed by the governor, but was not countersigned by the secretary of state and sealed with the great seal

of the state. The refusal of the secretary of state to do the acts enjoined upon him cannot affect the validity of the appointment, or destroy the efficacy of the acts of the governor.

§ 19. An account shall be kept by the officers of the executive department, and of all public institutions of the state of all moneys received by them, severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report hereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislative assembly, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislative assembly.

§ 20. The governor, secretary of state and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prisons as may be prescribed by law. They shall consti-

tute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claims against the state except for salaries and compensation of officers fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said board. The legislative assembly may provide for the temporary suspension of the state treasurer by the governor, when the board of examiners deem such action necessary for the protection of the moneys of the state.

State v. Kenney, 9 Mont. 242; 23 Pac. 740. The compensation of a member of the house of representatives of the first legislative assembly of the state is fixed by the constitution, and is not a claim against the state to be examined by the board of examiners.

State v. Kenney, 10 Mont. 495; 26 Pac. 197.

State v. Hickman, 11 Mont. 553; 29 Pac. 93. When a claim against the state has been approved by the board of examiners and a warrant drawn therefor, the jurisdiction of the board ceases. The obligation of the state to pay interest thereon arises by operation of law and cannot be controlled by the board of examiners.

State v. Cook, 17 Mont. 534; 43 Pac. 929. The compensation of a member of the state capitol commission is fixed by

law, and his claim for services and mileage cannot be passed upon by the state board of examiners.

State v. Collins, 21 Mont. 453; 53 Pac. 1116. The act approved March 4, 1897, provides for the issuance of bonds for the erection of state university buildings, and creates a building commission with authority to draw warrants on the state treasurer for sums due any contractor. This is a trust fund established by law in pursuance of an act of congress, which the board of examiners cannot control.

State v. Barret, 26 Mont. 68; 66 Pac. 506. The funds and income derived from the grant by act of congress of certain lands for the state agricultural college are trust funds, disbursed through the agency of the state, and are not subject to the board of examiners.

ARTICLE VIII.

JUDICIAL DEPARTMENTS.

§ 1. The judicial power of the state shall be vested in the senate sitting as a court of impeachment, in a supreme court, district courts, justices of the peace, and such other inferior courts as the legislative assembly may establish in any incorporated city or town.

In re Kane's Estate, 12 Mont. 203; 29 Pac. 425. The act, approved March 6, 1891, conferring on clerks of the district courts the power in vacation to grant letters of guardianship and do other acts in probate matters, does not clothe these officers with authority to hear evidence and adjudicate a person mentally incompetent to care for himself, or manage his property. Such authority involves the exercise of judicial power and is vested in such cases in the judge of the district court.

State v. Judges, 30 Mont. 199; 40 Pac. 13. The district courts of this state are distinct entities, and the transfer of a cause from one district to another amounts to a change of venue.

State v. Justice Court, 31 Mont. 261; 78 Pac. 499. The authority of the justice of the peace and of the justice of the peace court, are identical, so far as judicial matters are concerned, but there is a distinction between a particular district court and the judge of that court.

§ 2. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, and shall have a general supervisory control over all inferior courts, under such regulations and limitations as may be prescribed by law.

State v. District Court, 22 Mont. 240; 56 Pac. 226. The constitution giving the supreme court supervisory control over

inferior courts does not authorize the granting of a writ of prohibition, prohibiting a district court from appointing

a receiver of a corporation merely to avert probable injury to the applicants for the writ.

Raleigh v. District Court, 24 Mont. 310; 61 Pac. 992.

State v. Hogan, 24 Mont. 381; 62 Pac. 494. Except as otherwise provided in the constitution, the supreme court has appellate jurisdiction only.

State v. District Court, 24 Mont. 556; 63 Pac. 397. The grant of appellate jurisdiction to the supreme court implies all the instrumentalities necessary to make it effective. The provision of this section that the supreme court "shall have a general supervisory control" is a distinct grant of jurisdiction, independent of any other power granted. The supreme court has power, in the absence of legislation, to establish rules for the exercise of its appellate and supervisory jurisdiction. The proper instrument by which the supreme court exercises its power of supervisory control is the "supervisory writ," which must be framed when the case arises.

M. O. P. Co. v. Lindsay, 25 Mont. 28; 63 Pac. 716.

Moore v. District Court, 25 Mont. 32; 63 Pac. 686. A writ of supervisory control will not be granted to command a district court to sustain a motion for judgment on the pleadings.

A. C. M. Co. v. District Court, 25 Mont. 521; 65 Pac. 1026. Defendant sued relators and alleged they were removing ore from his lode mining claim, but the evidence showed the *prima facie* right was in relators. The district court granted an order for defendant and his employees to enter and inspect the surrounding mines of the relators for forty days for the purpose of obtaining evidence. This order was not appealable, nor subject to control by any of the specified writs within the jurisdiction of the supreme court, and it was a proper case for the supreme court to exercise the power of supervisory control over the inferior court.

Jordan v. Andrus, 26 Mont. 39; 66 Pac. 502. The words "limitations" and "regulations" in this section mean restrictions of power and rules of conduct or proceeding. The legislature has no power to regulate the physical form of the pleadings and instruments to be filed with the supreme court, and the act, approved March 9, 1901, providing that transcripts on appeal may be printed or type written, at the election of appellant, is invalid.

Bordeaux v. Bordeaux, 26 Mont. 535; 69 Pac. 104. The supreme court is with-

out power to allow temporary alimony or suit money pending an appeal in a divorce case. After an appeal is taken, the action is still in the district court. The allowance of temporary alimony or suit money is not within the original jurisdiction of the supreme court and is not necessary to the complete exercise of its appellate jurisdiction.

Finlen v. Heinze, 27 Mont. 112; 69 Pac. 831. The supreme court has inherent power to preserve the subject of litigation and the status of the parties pending an appeal. The power of limitation given the legislature does not extend to the right of appeal from final judgments, or the power of the supreme court on such appeals, but merely to the time when and within which appeals may be taken, to matters of procedure, and the extent of relief to be granted on appeals from interlocutory orders. In the absence of legislation, the supreme court may adopt rules to provide the necessary appellate procedure.

State v. District Court, 27 Mont. 130; 69 Pac. 989. Contempt proceedings are not cases which, in the absence of legislation, may be reviewed on appeal. A writ of supervisory control is the only means by which the supreme court can determine whether there is evidence to support a judgment of contempt.

In re Weston, 28 Mont. 212; 72 Pac. 514. The ordinary appellate power of the supreme court is limited to a review of the decision of the lower court, and a judgment affirming, modifying or reversing such decision, with the strictly ancillary power to issue, hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of this appellate jurisdiction. The power of supervisory control is lodged in the supreme court sitting as an organized judicial body and cannot extend to or affect any other body or individual.

Featherman v. Granite County, 28 Mont. 463; 72 Pac. 972. The supreme court has jurisdiction to entertain appeals or writs of error only when the statutory requirements have been complied with. An appeal from a final judgment will be dismissed if the record does not contain a copy of the judgment roll in the case.

Emerson v. McNair, 28 Mont. 579; 73 Pac. 122. On appeal from an order setting aside a judgment taken against defendants by default, the only method by which the papers used by the court below on the hearing may be certified to the supreme court is by incorporating them in a bill of exceptions.

§ 3. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo-warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. When a jury is required in the supreme court to determine an issue of fact, said court shall

have power to summon such jury in such manner as may be provided by law. Each of the justices of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

See notes to sections 1 and 2 of this article.

Lloyd v. Sullivan, 9 Mont. 587; 24 Pac. 219. The word "cases" in this section includes an appeal from an order refusing a motion for a new trial in an election contest concerning the office of sheriff.

In re MacKnight, 11 Mont. 132; 27 Pac. 337. This section does not restrict the supreme court to a use of the writ of *certiorari* in the exercise of its appellate jurisdiction only.

State v. Canvassers, 13 Mont. 51; 31 Pac. 890.

In re Finkelstein, 13 Mont. 427; 34 Pac. 848. The scope of the writ of *certiorari* is not enlarged by this section so as to permit a review by the supreme court of an order of the district court for the payment of alimony where imprisonment for contempt is involved.

State v. Hogan, 24 Mont. 381; 62 Pac. 494. The supreme court has power in its discretion to issue, hear and determine writs of prohibition.

State v. Moran, 24 Mont. 437; 63 Pac. 391. The supreme court in the exercise of its original jurisdiction can issue the writ of injunction, and restrain the clerk of Silver Bow county from printing upon the official ballot a ticket.

State v. District Court, 24 Mont. 556; 63 Pac. 397. This section is a grant of power without limitation or qualification, authorizing the supreme court to issue the writs therein specified, in its discretion; but the supreme court has no authority by virtue of its supervisory control to vacate under a writ of *certiorari* an order of the district court discharging a prisoner in *habeas corpus* proceedings.

A. C. M. Co. v. District Court, 25 Mont. 521; 65 Pac. 1026.

See note to section 2 of this article.

Jordan v. Andrus, 26 Mont. 39; 66 Pac. 502.

See note to section 2 of this article.

Malonev v. King, 26 Mont. 491; 68 Pac. 1013. The supreme court is not authorized to suspend the operation of, vacate, or set aside a prohibitory injunction order restraining parties from entering or mining in a lode claim, during the pending of an appeal therefrom.

Bordeaux v. Bordeaux, 26 Mont. 535; 69 Pac. 104.

See note to section 2 of this article.

State v. Broadbent, 27 Mont. 64; 69 Pac. 104. No appeal lies from a refusal of a district judge to grant a certificate of probable cause in a criminal case, but a justice of the supreme court can issue such certificate upon such refusal.

Finlen v. Heinze, 27 Mont. 112; 69 Pac. 831. The writ of injunction is a jurisdictional, prerogative writ, correlative with the writ of mandamus. Under this section, the supreme court may enjoin the operation of a mine and require it to be preserved in *statu quo* pending the appeal; and the trial court has no power to issue an injunction in aid of the appeal. A decree of a trial court, designed to protect the rights of the parties pending an appeal to the supreme court from a final judgment, being void, does not estop the party at whose instance it is entered, from applying to the supreme court for an injunction to preserve the subject of litigation.

State v. District Court, 27 Mont. 130; 69 Pac. 989.

See note to section 2 of this article.

Featherman v. Granite County, 28 Mont. 463; 72 Pac. 973. The limitations, which "may be prescribed by law," mentioned in this section, refer to statutes in existence at the time of the adoption of the constitution, and adopted by the schedule which is a part thereof, or statutes thereafter to be passed, specifying under what limitations appeals may be taken. The regulations, which "may be prescribed by law," refer to statutes adopted or to be enacted providing the methods by which appeals and proceedings upon writs of error may be perfected.

Emerson v. McNair, 28 Mont. 579; 73 Pac. 122.

See note to section 2 of this article.

Glavin v. Lane, 29 Mont. 229; 74 Pac. 407. When a notice of appeal has been filed and served, and a bond has been filed with the clerk of the district court, jurisdiction over the appeal is in the supreme court, but the appeal cannot be heard and determined where the record is defective.

In re O'Brien, 29 Mont. 548; 75 Pac. 201. An application for a writ of *habeas corpus* will be dismissed if it appears that the petitioner is not "held in actual custody."

Pirrie v. Moule, 33 Mont. 5; 81 Pac.

392. An undertaking on appeal is "insufficient" when it has some efficiency, but not enough to meet the necessary requirements. *State v. Court*, 35 Mont. 54; 88 Pac. 565.

§ 4. At least three terms of the supreme court shall be held each year at the seat of government.

§ 5. The supreme court shall consist of three justices, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said justices may adjourn the court from day to day, or to a day certain and the legislative assembly shall have the power to increase the number of said justices to not less nor more than five. In case any justice or justices of the supreme court shall be in any way disqualified to sit in a cause brought before such court, the remaining justice or justices shall have power to call on one or more of the district judges of this state as in the particular case may be necessary to constitute the full number of justices of which the said court shall then be composed, to sit with them in the hearing of said cause. In all cases where a district judge is invited to sit and does sit as by this section provided, the decision and opinion of such district judge shall have the same force and effect in any cause heard before the court as if regularly participated in by a justice of the supreme court.

Section 5 is given as amended by act approved March 7, 1899 (6th Sess., p. 152), which was declared to be in force by proclamation by the Governor December 18, 1900.

State v. Canvassers, 13 Mont. 52; 31 Pac. 890. judge when a judge of the supreme court is disqualified (Session Laws, Fifth Session, page 57) is void.
Durfee v. Harper, 22 Mont. 361; 56 Pac. 584. An amendment to this section, providing for calling in a district See note to section 9, Article XIX.

§ 6. The justices of the supreme court shall be elected by the electors of the state at large, as hereinafter provided.

§ 7. The term of office of the justices of the supreme court, except as in this constitution otherwise provided, shall be six years.

§ 8. There shall be elected at the first general election, provided for by this constitution, one chief justice and two associate justices of the supreme court. At said first election the chief justice shall be elected to hold his office until the general election in the year one thousand eight hundred ninety-two (1892), and one of the associate justices to hold office until the general election in the year one thousand eight hundred ninety-four (1894), and the other associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-

two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

§ 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

Lloyd v. Silver Bow County, 11 Mont. 415; 28 Pac. 455. State v. Acton, 31 Mont. 42; 77 Pac. 301.

§ 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

DISTRICT COURTS.

§ 11. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, af-

fectured by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

Blue B. M. Co. v. Murray, 9 Mont. 476; 23 Pac. 1024. The district court, by virtue of its equity powers, and independent of the statute, can authorize the inspection and survey of a lode mining claim and the levels, shafts, winzes and cross-cuts therein, and the prosecution of work to procure evidence, upon the motion of any party to the action.

Lloyd v. Sullivan, 9 Mont. 588; 24 Pac. 219. The appellate jurisdiction of the supreme court extends to all cases, actions and proceedings which have been finally decided in the district courts.

Wallace v. Helena R. Co., 10 Mont. 28; 24 Pac. 627.

In re McFarland's Estate, 10 Mont. 450; 26 Pac. 186. "All matters of probate" and the administration of laws relating thereto are under the original jurisdiction of the district courts.

State v. Myers, 11 Mont. 367; 28 Pac. 651. Under this section, providing that the district court shall have original jurisdiction in all cases of misdemeanor not otherwise provided for, the district court does not have original, but appellate jurisdiction to try the misdemeanor of assault and battery, as jurisdiction to try such misdemeanor is conferred by law upon the justices' court. The first paragraph of section 6 of the criminal practice act, conferring concurrent jurisdiction in all misdemeanors upon the district and justices courts is in conflict with this section.

Edgerton v. Edgerton, 12 Mont. 145; 29 Pac. 973.

In re Kane's Estate, 12 Mont. 203; 29 Pac. 425.

See note to section 1 of this article.

State v. Canvassers, 13 Mont. 43; 31 Pac. 886.

State v. Court, 13 Mont. 372; 34 Pac.

299. An act to regulate the practice of medicine, approved February 28, 1889, allowed an appeal to the district court by the aggrieved party in case of the revocation or refusal by the board of medical examiners of a license to practice medicine, but did not prescribe any procedure by which a hearing on appeal could be had. The district court had jurisdiction to hear the appeal.

Bookwalter v. Conrad, 15 Mont. 468; 39 Pac. 574. An action concerning real estate in Missoula County was commenced in the district court thereof February 4, 1893. Afterwards, the county of Flathead was created and this real estate became a part thereof. The defendants appeared and filed a motion for a change of venue to Flathead county. Section 56 of the Code of Civil Procedure, providing that actions concern-

ing land shall be "tried" in the county where the same is situated, is not in conflict with this section, providing that such actions shall be "commenced" in the county where the land is situated, and the motion should be granted.

State v. Brantly, 20 Mont. 177; 50 Pac. 410.

Burns v. Smith, 21 Mont. 265; 53 Pac. 744. The district court, sitting as a court of equity, has jurisdiction to try and determine an action brought against an estate of a decedent to enforce an agreement made by deceased to devise a certain share in his property; and jurisdiction in such cases is not confined to the district court sitting as a court of probate.

Estate of Tuohy, 23 Mont. 308; 58 Pac. 723. An order of the district court, directing an executor to execute a lease of mining ground belonging to an estate, is not appealable.

State v. Hogan, 24 Mont. 383; 62 Pac. 583. The supreme court has jurisdiction of the writ of prohibition defined in the Code of Civil Procedure, and judgments and orders of district courts in proceedings under section 1980 thereof.

State v. Moran, 24 Mont. 438; 63 Pac. 391.

State v. District Court, 24 Mont. 553; 63 Pac. 396.

Bordeaux v. Bordeaux, 26 Mont. 534; 69 Pac. 104.

See note to section 3 of this article. McGlauffin v. Wormser, 28 Mont. 182; 72 Pac. 429.

State v. Judges, 30 Mont. 199; 76 Pac. 13.

There is a misprint in the printed copies of the constitution, and in the first line the word "court" should be "courts."

See note to section 1 of this article.

Clark v. Great N. R. Co., 30 Mont. 464; 76 Pac. 1005. The district court, sitting as an appellate court, is of limited jurisdiction and may only proceed as provided by law.

State v. Clancy, 30 Mont. 539; 77 Pac. 315. The act approved December 10, 1903, providing for the disqualification of district judges on the filing of an affidavit of prejudice, does not violate this section. The filing of the affidavit, without a determination of the question of prejudice, deprives the court of jurisdiction. It is the imputation of prejudice, which constitutes the disqualification, and this imputation is not the subject of judicial investigation.

State v. Justice Court, 31 Mont. 262; 78 Pac. 499. An appeal from a judgment of the district court by A, the

justice of the peace, is an appeal by the justice of the peace court and is sufficient to give the supreme court jurisdiction.

State v. Court, 35 Mont. 53; 88 Pac. 564. The jurisdiction granted to district courts and their judges to issue the writ of *habeas corpus* is exclusive; and the power of a district judge to inquire into the legality of the detention of persons

in custody is confined to cases where the complainant, who seeks his release, is so detained within the boundaries of the district court over which the judge presides. If such judge is absent and no judge temporarily presides over such court, the application should be made to the supreme court, or a justice thereof, and not to a district judge in another district.

§ 12. The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

Wallace v. Helena R. Co., 10 Mont. 29; 24 Pac. 626. This provision that "any judge of the district court may hold court for any other district judge," does not in the absence of constitutional or statutory provision giving district judges concurrent jurisdiction, empower a judge of one district, who is trying an action for a judge in another district, to exercise out of court the judicial power of the judge whose court he is holding; and an order of injunction issued by such judge in chambers, when the judge of the district court was present in his district and discharging his duties, is void.

Granite M. Co. v. Durfee, 11 Mont. 225; 27 Pac. 920.

Parrott v. McDewitt, 14 Mont. 205; 36 Pac. 193.

Farleigh v. Kelly, 24 Mont. 372; 62 Pac. 496. Section 36 of the Code of Civil Procedure, giving the judge of one district, when holding court for the judge of another district, the same power, in court or chambers, as a judge thereof, does not enlarge the authority given by this section.

State v. Hogan, 24 Mont. 395; 62

Pac. 587. The right to nominate and elect district judges belongs to the electors of the district, and a state convention cannot validate a nomination for the office of district judge, where the convention making it does not properly represent the electors of the district.

In re Weston, 28 Mont. 217; 72 Pac. 516. This section makes provision for the substitution of one judge for another, and must be held to be exclusive, at least until the authority vested has been exhausted. The act of the eighth legislative assembly, chapter 42, providing for the designation and appointment of a district judge to temporarily hold court in another district and perform the official duties of the judge of such district, where such judge is biased or prejudiced, is in violation of this section.

State v. Clancy, 30 Mont. 538; 77 Pac. 315. The act approved December 10, 1903, providing for the disqualification of district judges on the filing of an affidavit of prejudice, thereupon disqualifying him to further act in the case, is constitutional.

State v. District Court, 33 Mont. 155; 82 Pac. 794.

§ 13. Until otherwise provided by law the judicial districts of the state shall be constituted as follows: First district, Lewis and Clarke county; Second district, Silver Bow county; Third district, Deer Lodge county; Fourth district, Missoula county; Fifth district, Beaverhead, Jefferson and Madison counties; Sixth district, Gallatin, Park and Meagher counties; Seventh district, Yellowstone, Custer and Dawson counties; Eighth district, Choteau, Cascade and Fergus counties.

Wallace v. Helena R. Co., 10 Mont. 29; 24 Pac. 626.

§ 14. The legislative assembly may increase or decrease the number of judges in any judicial district; *provided*, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; *provided*, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of

districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Wallace v. Helena R. Co., 10 Mont. 38; 24 Pac. 626. State v. Hickman, 10 Mont. 498; 26 Pac. 386.

§ 15. Writs of error and appeals shall be allowed from the decisions of the said district courts to the supreme court under such regulations as may be prescribed by law.

Lloyd v. Sullivan, 9 Mont. 587; 24 Pac. 219.

In re McFarland's Estate, 10 Mont. 455; 26 Pac. 187.

Jordan v. Andrus, 26 Mont. 39; 66 Pac. 502.

See note to section 3 of this article. Finlen v. Heinze, 27 Mont. 124; 70 Pac. 517. The expression in this section "the decisions," means all the decisions of whatever character. Parties litigant have the right to appeal from all the decisions made in the progress of the case, and the supreme court has jurisdic-

tion to hear and determine them, subject only to such reasonable limitations and regulations as the legislature may enact. Judgments in contempt and orders in some summary proceedings, in which appeals were not allowed under the organic act of the territory, may be deemed exceptions to this broad statement of the rule.

Featherman v. Granite County, 28 Mont. 463; 72 Pac. 975.

See note to sections 2 and 3 of this article.

§ 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

State v. Clancy, 30 Mont. 537; 77 Pac. 315. The legislature cannot impose any additional conditions to those enumerated in this section as a prerequisite to the holding of the office of district judge by a man who might be elected

or appointed. The act approved December 10, 1903, providing for the disqualification of a district judge by filing an affidavit of prejudice does not violate this section.

§ 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

Wallace v. Helena R. Co., 10 Mont. 40; 24 Pac. 626.

State v. McHatton, 10 Mont. 376; 25 Pac. 1048. The operation of the act, approved March 14, 1889, providing for the appointment of jury commissioners at each regular term of the district court, is not suspended by this section in the county of Silver Bow, which comprises a judicial district and where the court is in perpetual session; and it is the duty of a district judge in such county to designate the times when the terms of his court shall begin.

Whitbeck v. Railway Co., 21 Mont.

104; 52 Pac. 1098. The rule declared in State v. McHatton, *supra*, has been changed by section 38 of the Code of Civil Procedure, which provides, that there is no term of court in any judicial district of the state where a county is a district.

State v. Bristol, 21 Mont. 580; 55 Pac. 107. An order fixing the terms of court in a judicial district composed of more than one county was made by the judge thereof. His successor did not have the power to revoke the order and change the terms.

§ 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The

clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

Lloyd v. Silver Bow Co., 11 Mont. 415; 28 Pac. 455.

In re Kane's Estate, 12 Mont. 203; 29 Pac. 425.

See note to section 1 of this article.

COUNTY ATTORNEYS.

§ 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be two years, except that the county attorneys first elected shall hold their offices until the general election in the year one thousand eight hundred and ninety-two, (1892) and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

State v. Jackson, 9 Mont. 518; 24 Pac. 215.

Lloyd v. Silver Bow Co., 11 Mont. 415; 28 Pac. 455.

See note to section 1, article IV.

JUSTICES OF THE PEACE.

§ 20. There shall be elected in each organized township of each county by the electors of such township at least two justices of the peace, who shall hold their offices, except as otherwise provided in this constitution, for the term of two years. Justices courts shall have such original jurisdiction within their respective counties as may be prescribed by law, except as in this constitution otherwise provided; *Provided*, That they shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved exceeds the sum of three hundred dollars.

State v. Kennie, 24 Mont. 56; 60 Pac. 593.

State v. Taylor, 33 Mont. 215; 83 Pac. 484.

Oppenheimer v. Regan, 32 Mont. 115; 79 Pac. 696.

See notes to section 21 of this article.

§ 21. Justices courts shall not have jurisdiction in any case involving the title or right of possession of real property, nor in cases of divorce, nor for annulment of marriage, nor of cases in equity; nor shall they have power to issue writs of habeas corpus, mandamus, certiorari, quo warranto, injunction, or prohibition, nor the power of naturalization; nor shall they have jurisdiction in cases of felony, except as examining courts; nor shall criminal cases in said courts be prosecuted by indictment; but said courts shall have such jurisdiction in criminal matters, not of the grade of felony, as may be provided by law; and shall also have concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

State v. Myers, 11 Mont. 366; 28 Pac. 651. The jurisdiction of the misdemeanor of assault and battery is in the justice's court and "provided by law."

State v. Votaw, 13 Mont. 404; 34 Pac. 315. A justice of the peace has jurisdiction of an action by a landlord against a tenant holding after default in payment of rent under the forcible entry and unlawful detainer act, and this section clothing justices courts with concurrent jurisdiction with the district courts in cases of forcible entry and unlawful detainer.

State v. Kennie, 24 Mont. 56; 60 Pac. 593.

Shea v. Reagan, 29 Mont. 316; 74 Pac. 740. Justices courts have no equity jurisdiction and cannot entertain actions involving matters of equitable cognizance; and an action by a claimant to establish his claim for services, in so far as it seeks to establish and foreclose a lien on the attached property of the debtor, is an equitable proceeding and not within the jurisdiction of a justice of the peace. The district court did not acquire jurisdiction of this action by

an appeal because the Justice's court did not have original jurisdiction.

State v. Lagoni, 30 Mont. 475; 76 Pac. 1045. This section provides that a justice's court shall have jurisdiction as an examining court in cases of felony, and the statute provides the method of procedure, which must be followed.

Oppenheimer v. Regan, 32 Mont. 115; 79 Pac. 696. Section 66 of the Code of Civil Procedure, enacted in pursuance of sections 20 and 21 of this article, does not clothe a justice of the peace with jurisdiction to entertain an action against a sheriff for damages for nonperformance of an official duty and a penalty imposed by law for such nonperformance; and where a justice of the peace did not have jurisdiction of the subject matter of an action, the district court could acquire none by appeal.

State v. Taylor, 33 Mont. 215; 83 Pac. 484. Section 66 of the Code of Civil Procedure enacted in pursuance of sections 21 and 22 of this article does not clothe justices of the peace with power to try and determine actions for deceit.

§ 22. Justices courts shall always be open for the transaction of business, except on legal holidays and non-judicial days.

§ 23. Appeal shall be allowed from justices courts, in all cases, to the district courts, in such manner and under such regulations as may be prescribed by law.

State v. Lindsay, 22 Mont. 400; 56 Pac. 828. A right of appeal is granted from the justice's court to the district court in all cases; and an appeal lies where a justice refuses to set aside a judgment by default, and the district court should entertain the appeal for a trial *de novo* as it was tried, or should have been tried, in the justice's court.

State v. District Court, 30 Mont. 95; 75 Pac. 863. The right of appeal guaranteed by this section may be exercised only in obedience to the statutory regulations. The only appeal from a justice's

court provided for is from the judgment, and there is no appeal from an order in such court made before or after judgment.

Clark v. Great N. R. Co., 30 Mont. 464; 76 Pac. 1004. Only such questions as were raised in the justice's court can be tried on appeal in the district court, and where there was no showing that a motion was made in the justice's court to set aside the judgment and dismiss the cause, it was proper for the district court to overrule a motion to dismiss the cause.

POLICE AND MUNICIPAL COURTS.

§ 24. The legislative assembly shall have power to provide for creating such police and municipal courts and magistrates for cities and towns as may be deemed necessary from time to time, who shall have jurisdiction in all cases arising under the ordinances of such cities and towns, respectively; such police magistrates may also be constituted ex-officio justices of the peace for their respective counties.

MISCELLANEOUS PROVISIONS.

§ 25. The supreme and district courts shall be courts of record.

§ 26. All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all courts of the

same class or grade, so far as regulated by law, shall be uniform.

State v. McHatton, 10 Mont. 378; 25 Pac. 1048. There must be one statute for the impaneling of a petit jury by each district court of the state, and the rights of parties which are dependent upon the commencement, duration or adjournment of its terms, must be the same in every county.

State v. Landry, 29 Mont. 224; 74 Pac. 420.

State v. Clancy, 30 Mont. 543; 77 Pac. 316. The act approved December 10, 1903, providing for the disqualification of district judges on the filing of an affidavit of prejudice is general in its terms and operation throughout the state and sufficiently complies with this section.

§ 27. The style of all process shall be "The State of Montana," and all prosecutions shall be conducted in the name and by the authority of the same.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

Ind. P. Co. v. Lewis & Clark Co., 30 Mont. 85; 75 Pac. 861.

§ 28. There shall be but one form of civil action, and law and equity may be administered in the same action.

Lloyd v. Sullivan, 9 Mont. 587; 24 Pac. 219.

Edgerton v. Edgerton, 12 Mont. 145; 29 Pac. 978.

Bank v. Onera House, 23 Mont. 40;

57 Pac. 447. The old distinctions between actions at law and in equity have been abolished, and the court, having jurisdiction of the parties, can afford such relief as the facts of the case may justify

§ 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be increased or diminished during the terms for which they shall have been respectively elected. Until otherwise provided by law, the salary of the justices of the supreme court shall be four thousand dollars per annum each, and the salary of the judges of the district courts shall be three thousand five hundred dollars per annum each.

State v. Hickman, 10 Mont. 499; 26 Pac. 387.

Lloyd v. Silver Bow Co., 11 Mont. 413; 28 Pac. 455.

§ 30. No justice of the supreme court nor judge of the district court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office, in any form whatever, except the salary provided by law.

Lloyd v. Silver Bow Co., 11 Mont. 413; 28 Pac. 455.

§ 31. No justice or clerk of the supreme court, nor judge or clerk of any district court shall act or practice as an attorney or counsellor at law in any court of this state during his continuance in office.

State v. Jackson, 9 Mont. 519; 24 Pac. 215. This section is a prohibition directed against the district judge

§ 32. The legislative assembly may provide for the publication of decisions and opinions of the supreme court.

§ 33. All officers provided for in this article, excepting justices of the supreme court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town for which they may be elected or appointed.

§ 34. Vacancies in the office of justice of the supreme court, or judge of the district court, or clerk of the supreme court, shall be filled by appointment, by the governor of the state, and vacancies in the offices of county attorneys, clerk of the dis-

trict court, and justices of the peace, shall be filled by appointment, by the board of county commissioners of the county where such vacancy occurs. A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

State v. Hickman, 10 Mont. 499; 26 Pac. 387. All judges of the district courts, who have been elected or appointed, are governed by the same provisions of the constitution. In the ab-

sence of any statute, they are entitled to receive from the state the salary which has been defined in the constitution.

§ 35. No justice of the supreme court or district judge shall hold any other public office while he remains in the office to which he has been elected or appointed.

State v. Jackson, 9 Mont. 519; 24 Pac. 215.

§ 36. A civil action in the district court may be tried by a judge *pro tempore*, who must be a member of the bar of the state, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the court, and sworn to try the cause; and in such case any order, judgment or decree, made or rendered therein by such judge *pro tempore*, shall have the same force and effect as if made or rendered by the court with the regular judge presiding.

Littrell v. Wilcox, 11 Mont. 77; 27 Pac. 394. The authority given to a special judge to try a case carries with it authority to do any act incidental or necessary to the exercise thereof. The disqualification of a judge to act as such,

where he has been an attorney for either party to a case, does not extend to a formal act like an order for the issuance of an open venire for a jury to try such case, where the regular panel has been discharged.

§ 37. Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office.

Wallace v. Helena R. Co., 10 Mont. 24; 24 Pac. 626.

ARTICLE IX.

RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE.

§ 1. All elections by the people shall be by ballot.

State v. Benton, 13 Mont. 330; 34 Pac. 307.

State v. Acton, 31 Mont. 41; 77 Pac. 301.

§ 2. Every male person of the age of twenty-one years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law; *Provided*, first, that no person convicted of felony shall have the right to vote unless he has been pardoned; *Provided*, second, that nothing herein contained shall

be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; *Provided*, that after the expiration of five years from the time of the adoption of this constitution no person except citizens of the United States shall have the right to vote.

State v. Long, 21 Mont. 27; 52 Pac. 645. The act, approved March 6, 1897, relating to the election of school trustees, which provides that a resident of the school district, who is not a citizen of the United States, may register upon taking an oath that he is entitled to become a citizen of the United States, and that it

is his honest intention to become such before the school election day of that year, does not violate this section providing that no person except citizens of the United States shall have the right to vote.

State v. Acton, 31 Mont. 43; 77 Pac. 301.

§ 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the state, or of the United States, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any alms-house or other asylum at the public expense, nor while confined in any public prison.

§ 4. Electors shall in all cases, except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning therefrom.

§ 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

§ 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of being stationed at any military or naval place within the same.

§ 7. No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state at least one year next before his election or appointment.

§ 8. No idiot or insane person shall be entitled to vote at any election in this state.

State v. Martin, 24 Mont. 408; 62 Pac. 590.

§ 9. The legislative assembly shall have the power to pass a registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise.

§ 10. Women shall be eligible to hold the office of county superintendent of schools or any school district office, and shall have the right to vote at any school district election.

State v. Acton, 31 Mont. 43; 77 Pac. 302. A county superintendent of schools must be either a woman, or a person

qualified to vote at general elections and for state officers in this state.

§ 11. Any person qualified to vote at general elections and for state officers in this state, shall be eligible to any office therein except as otherwise provided in this constitution, and subject to such additional qualifications as may be prescribed by the

legislative assembly for city offices and offices hereafter created.

State v. Martin, 24 Mont. 408; 62 Pac. 590. State v. Acton, 31 Mont. 43; 77 Pac. 302.

§ 12. Upon all questions submitted to the vote of the tax-payers of the state, or any political division thereof, women who are tax-payers and possessed of the qualifications for the right of suffrage required of men by this constitution, shall equally with men have the right to vote.

§ 13. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of legal votes shall be declared elected.

Stackpole v. Hallahan, 16 Mont. 58; 40 Pac. 86.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

§ 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, soldiers' home, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

§ 2. At the general election in the year one thousand eight hundred and ninety-two, the question of permanent location of the seat of government is hereby provided to be submitted to the qualified electors of the state, and the majority of all the votes upon said question shall determine the location thereof. In case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be, and is hereby, submitted in like manner to the qualified electors at the next general election thereafter: *Provided*. That until the seat of government shall have been permanently located the temporary seat of government shall be and remain at the city of Helena.

State v. Rotwitt, 15 Mont. 30; 37 Pac. 845.

§ 3. When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the state voting on that question at a general election at which the question of the location of the seat of government shall have been submitted by the legislative assembly.

§ 4. The legislative assembly shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located, as herein provided.

§ 5. The several counties of the state shall provide as may be prescribed by law for those inhabitants, who, by reason of age, infirmity or misfortune, may have claims upon the sympathy and aid of society.

ARTICLE XI.

EDUCATION.

§ 1. It shall be the duty of the legislative assembly of Montana to establish and maintain a general, uniform and thorough system of public, free common schools.

State v. Yellowstone Co., 12 Mont. 506; 31 Pac. 79.

Campana v. Calderhead, 17 Mont. 550; 44 Pac. 84. The legislative assembly has the power to establish a series of text books for use in the public schools of the state, but this section does not require that a uniform series of text books shall be established and main-

tained.

State v. Long, 21 Mont. 30; 52 Pac. 646. This section does not prohibit the enactment of a law classifying school districts for the election of trustees according to population, but the classification must be reasonable and uniform in its operation and effect on all districts.

§ 2. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands; and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates, or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state, and all other grants, gifts, devises or bequests made to the state for general educational purposes.

§ 3. Such public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion, to be invested, so far as possible, in public securities within the state, including school district bonds, issued for the erection of school buildings, under the restrictions to be provided by law.

Butte v. School District, 29 Mont. 340; 74 Pac. 870. Money raised by taxation for school purposes becomes a part of the school fund of the district within which it is raised, and the school

district of an incorporated city cannot be compelled by a special assessment of the city to pay the cost of sprinkling streets in front of the property of the district used for educational purposes.

§ 4. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, which shall have the direction, control, leasing and sale of the school lands of the state, and the lands granted or which may hereafter be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be prescribed by law.

State v. Barret, 26 Mont. 65; 66 Pac. 506.

§ 5. The interest on all invested school funds of the state, and all rents accruing from the leasing of any school lands, shall be apportioned to the several school districts of the state in proportion to the number of children and youths between the ages of six and twenty-one years, residing therein respectively, but no district shall be entitled to such distributive share that does not

maintain a public free school for at least three months during the year for which distributions shall be made.

§ 6. It shall be the duty of the legislative assembly to provide by taxation, or otherwise, sufficient means, in connection with the amount received from the general school fund, to maintain a public, free common school in each organized district in the state, for at least three months in each year.

State v. Yellowstone Co., 12 Mont. 506; 31 Pac. 79.

§ 7. The public free schools of the state shall be open to all children and youth between the ages of six and twenty-one years.

§ 8. Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever.

§ 9. No religious or partisan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the state; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

§ 10. The legislative assembly shall provide that all elections for school district officers shall be separate from those elections at which state or county officers are voted for.

§ 11. The general control and supervision of the state university and the various other state educational institutions shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex officio; the other eight members thereof shall be appointed by the governor, subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

State v. Barret, 26 Mont. 66; 66 Pac. created by the legislature under the 506. The state board of education was authority of this section.

§ 12. The funds of the state university and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from

leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

State v. Barret, 26 Mont. 65; 66 Pac. 506. Pursuant to the constitution the legislature has enacted regulations under which in default of sale, all agricultural and grazing lands belonging to the state may be leased under the direction of the state land commission for terms not exceeding five years, and the revenues therefrom must be paid to the state treasurer. The lands selected for the use of the state agricultural college under the grant by congress are subject to these regulations.

State v. Rice, 33 Mont. 385; 83 Pac. 875. The funds referred to in this section mean *all* funds, which shall be invested to *draw interest* and used for no other purpose. The state normal school

is one of the institutions of learning to which reference is made. Chapter 3 of the Session Laws of 1905, authorizing the state board of land commissioners to sell bonds and apply the proceeds to the erection, furnishing and equipment of an addition to the state normal school building, and pledging as security for the payment of the principal and interest on such bonds the lands granted by the act of congress violates this section and is void. The interest from these funds and rents from said lands, and not the principal sum derived from the sale of said lands or timber, shall be used for the maintenance and perpetuation of the normal school.

ARTICLE XII.

REVENUE AND TAXATION.

§ 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state.

State v. French, 17 Mont. 56; 41 Pac. 1079. The constitution does not require that licenses shall be uniform, and the first sentence of this section and section 11 of this article should be read together. The laundry license fee provided in the Political Code imposing a license per quarter of \$15 on steam laundries; of \$10 on one male laundryman; and of \$25 on a male laundryman employing one or more persons is valid.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 516. This article treats the limitations upon the power of taxation with great care and in almost every section can be found prohibitions on the legislative power concerning taxation.

State v. Camp Sing, 18 Mont. 129; 44 Pac. 516. The word "also" in the last sentence of this section was not used to mean that the legislature may impose license taxes for the support of the state, but to connect the two systems of revenue; and the imposing of license taxes is not restricted to the purposes of state revenue alone. The words of this section "levy," "assessment" and "rate" refer to taxation proper, and the word "impose" refers to licenses.

Gelsthorpe v. Furnell, 20 Mont. 299; 51 Pac. 267. The act, approved March 4, 1897, providing that all property of a decedent shall be subject to a tax at a fixed rate on every \$100, but that an estate valued at less than \$7,500 shall not be subject to any such "tax or duty," is not in conflict with this section, although the act does not impose uniform rate of taxation upon all heirs, devisees, legatees and distributees.

Danforth v. Livingston, 23 Mont. 562; 59 Pac. 917. It was the intention of the legislature, acting under the authority vested in it by sections 1, 16 and 18 of this article, to make the action of the assessor and board of county commissioners, sitting as a board of equalization, final, and deny to the courts power to review their judgment, or assume supervisory control over their proceedings. The county treasurer will not be restrained from the collection by sale of taxes on real estate, when the valuation fixed by the assessor is \$14,250, and the actual value is \$9,700.

N. W. I. Co. v. Lewis & Clark Co., 28 Mont. 490; 72 Pac. 983. This section applies to corporations as well as natural persons, and the legislature can prescribe reasonable terms upon which foreign corporations may do business in the state. The Civil Code, declaring that every insurance company in the state must be taxed upon the excess of premiums received over losses and ordinary expenses during the year, is constitutional; and the clause that insurance companies are not subject to any other taxation, except taxes on real estate and fees imposed by law, is unconstitutional.

Beck v. Holland, 29 Mont. 239; 74 Pac. 411.

Daly Bank v. Board, 33 Mont. 105; 81 Pac. 952. This section provides that the legislative assembly shall prescribe such regulations as shall secure a just valuation for taxation of *all* property, except that particularly exempted.

In re Tuohy's Estate, 35 Mont. 437; 90 Pac. 172.

§ 2. The property of the United States, the state, counties, cities, towns, school districts, municipal corporations and public libraries shall be exempt from taxation; and such other property as may be used exclusively for agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity may be exempt from taxation.

Montana C. M. v. County, 13 Mont. 563; 35 Pac. 3. This section and the law enacted in pursuance thereof do not exempt from taxation land on which buildings for charitable purposes are to be erected.

State v. Camp Sing, 18 Mont. 139; 44 Pac. 516. Liberal exemptions are provided for in this section.

Courtney v. Missoula Co., 21 Mont. 592; 55 Pac. 359. State lands, after

sale, but before the price is fully paid, are subject to taxation as the property of the purchaser, notwithstanding this section exempts the property of the state from taxation, and the state retains the legal title as security for the deferred payments.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 952.

See note to section 1 of this article.

§ 3. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as provided by law.

State v. Camp Sing, 18 Mont. 139; 44 Pac. 517. Mines and mining claims in the state are liberally protected from what might be deemed excessive taxation.

M. C. Co. v. Livingston, 21 Mont. 66; 52 Pac. 780. The annual net proceeds of coal mines acquired under the laws of the United States are subject to taxation.

Murray v. Hinds, 30 Mont. 469; 76 Pac. 1039. A lode mining claim was within the exterior limits of Butte, and the owners sold lots from the claim for

townsite purposes, but it had not been made an addition to the city. A shaft had been sunk on the part reserved for mining purposes, but it had been abandoned and the lot on which the shaft was sunk had been sold. The so-called reserve was not mining property for the purposes of taxation.

In re Tuohy's Estate, 35 Mont. 435; 90 Pac. 171. This section limiting the measure of value of mines for taxation purposes does not apply to a tax imposed on the privilege of taking by will, succession or testamentary grant.

§ 4. The legislative assembly shall not levy taxes upon the inhabitants or property in any county, city, town, or municipal corporation for county, town, or municipal purposes, but it may by law vest in the corporate authorities thereof powers to assess and collect taxes for such purposes.

Lockey v. Walker, 12 Mont. 582; 31 Pac. 640.

State v. Camp Sing, 18 Mont. 129; 44 Pac. 517. A license tax is not within the inhibition of this article; and the laundry license tax law, allowing seventy

per cent of the licenses to be retained by the county, does not levy a tax upon the inhabitants or property in a county for county purposes.

Helena W. Co. vs. Steele, 20 Mont. 8; 49 Pac. 384. Subdivision 64 of section

4800 of the Political Code, providing that no municipality having a water supply furnished by private persons shall erect any water plant to be operated by itself, but if it desires to acquire such a plant, shall purchase or condemn such supply, is in conflict with this section.

Mutual L. I. Co. v. Martien, 27 Mont. 440; 71 Pac. 471.

Butte v. Weston, 29 Mont. 127; 74

§ 5. Taxes for city, town and school purposes may be levied on all subjects and objects of taxation, but the assessed valuation of any property shall not exceed the valuation of the same property for state and county purposes.

State v. Yellowstone Co., 12 Mont. 506; 31 Pac. 79.

Lockey v. Walker, 12 Mont. 582; 31 Pac. 640. The action of the city authorities of Helena, in taking the assessment made by the county and state assessing authorities, as the assessment

Pac. 416. The county clerk of Silver Bow county was required to make and deliver to the city treasurer of Butte a duplicate assessment book as required by the Political Code. The Political Code, authorizing the collection of city taxes by the city treasurer is not in violation of section 5, article XVI of the Constitution when construed together with this section.

for the levy of municipal taxes on property within Helena, constituted a legal assessment; and the levy of taxes thereon by the city was legal.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 517.

§ 6. No county, city, town or other municipal corporation, the inhabitants thereof nor the property therein, shall be released or discharged from their or its proportionate share of state taxes.

§ 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this constitution exempted from taxation.

N. W. I. Co. v. L. & C. Co., 28 Mont. 495; 72 Pac. 985. The property of corporations shall bear its equal share of the burdens of taxation.

Daly Bank v. Board, 33 Mont. 105; 81 Pac. 952. The Civil Code, providing that the property of trust deposit and

security corporations shall be assessed for the purposes of taxation in the same manner as national banks, exempts the personal property of such companies from taxation and is, therefore, repugnant to sections 1 and 7 of this article.

§ 8. Private property shall not be taken or sold for the corporate debts of public corporations, but the legislative assembly may provide by law for the funding thereof, and shall provide by law for the payment thereof, including all funded debts and obligations, by assessment and taxation of all private property not exempt from taxation within the limits of the territory over which such corporations respectively have authority.

Hotchkiss v. Marion, 12 Mont. 222; 29 Pac. 823.

State v. Yellowstone Co., 12 Mont. 505; 31 Pac. 79.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 517.

Jay v. School District, 24 Mont. 230;

61 Pac. 254. An execution cannot issue against a school district to collect a judgment recovered by a teacher for services, and the judgment cannot be enforced until the fund provided for this purpose by law is available.

§ 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars (\$100,000,000), the rate shall not exceed two and one-half (2½) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars

(\$300,000,000), the rate shall never thereafter exceed one and one-half ($1\frac{1}{2}$) mills on each dollar of valuation; unless a proposition to increase such rate specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

State v. Kenney, 10 Mont. 492; 26 Pac. 384.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 517.

State v. Equalization Board, 18 Mont. 479; 46 Pac. 266.

State v. Fortune, 24 Mont. 156; 60

Pac. 1086. Section 11, of article X, of the constitution of Colorado is the same as this section in respect to the powers of the state board of equalization.

In re Tuohy's Estate, 35 Mont. 437; 90 Pac. 171.

§ 10. All taxes levied for state purposes shall be paid into the state treasury, and no money shall be drawn from the treasury but in pursuance of specific appropriations made by law.

State v. Kenney, 9 Mont. 394; 24 Pac. 97.

State v. Hickman, 11 Mont. 546; 29 Pac. 94.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 517.

Mutual L. I. Co. v. Martien, 27 Mont.

440; 71 Pac. 471. The only reasonable construction of this section, in connection with a provision that the county treasurer shall be the collector, is that the collector shall collect, and then pay into the state treasury, all taxes levied for state purposes.

§ 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.

Lockey v. Walker, 12 Mont. 582; 31 Pac. 640.

State v. French, 17 Mont. 56; 41 Pac. 1079.

See note to section 1 of this article.

State v. Camp Sing, 18 Mont. 140; 44 Pac. 517.

Gelsthorpe v. Furnell, 20 Mont. 307; 51 Pac. 267.

See note to section 1 of this article.

Mutual L. I. Co. v. Martien, 27 Mont. 440; 71 Pac. 471.

In re Tuohy's Estate, 35 Mont. 437; 90 Pac. 171.

N. W. L. Co. v. L. & C. Co., 28 Mont. 497; 72 Pac. 985.

Clark v. Maher, 34 Mont. 400; 87 Pac. 274. The part of subdivision 8 of section 3695 of the Political Code granting to private bankers the right to deduct their deposits (debts) from moneys on hand, for purposes of assessment, violates sections 11 and 16 of this article.

§ 12. No appropriation shall be made or any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

State v. Kenney, 10 Mont. 413; 25 Pac. 1024.

State v. Kenney, 10 Mont. 491; 26 Pac. 384.

State v. Kenney, 11 Mont. 555; 29 Pac. 89. This section, providing that no appropriation of public moneys shall be made for a longer term than two years,

is prospective only, and does not affect

an appropriation made by the act of the legislature relating to the publication of the supreme court reports, approved March 8, 1889, before the adoption of the constitution.

State v. Cook, 17 Mont. 535; 43 Pac. 930.

State v. Helena, 24 Mont. 532; 63 Pac. 103.

§ 13. The state treasurer shall keep a separate account of each fund in his hands, and shall at the end of each quarter of the fiscal year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor, or other person or persons authorized by law, shall verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government, and otherwise as the legislative assembly may require. The legislative assembly may provide by law further regulations for the safe keeping and management of the public funds in the hands of the treasurer; but notwithstanding any such regulations, the treasurer and his sureties shall in all cases be held responsible therefor.

§ 14. The making of profit out of public moneys, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law, but part of such punishment shall be disqualification to hold public office.

§ 15. The governor, secretary of state, state treasurer, state auditor and attorney general shall constitute a state board of equalization and the board of county commissioners of each county shall constitute a county board of equalization. The duty of the state board of equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the state. The duty of the county boards of equalization shall be to adjust and equalize the valuation of taxable property within their respective counties. Each board shall also perform such other duties as may be prescribed by law.

State v. Equalization Board, 18 Mont. 475; 46 Pac. 266. The state board of equalization has no power to increase the total valuation of the property of the state as disclosed and fixed by the abstracts and statements transmitted to

it by the assessors and county boards of equalization.

State v. Fortune, 24 Mont. 156; 60 Pac. 1086.

See note to section 9 of this article.

§ 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state shall be assessed by the state board of equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

Danforth v. Livingston, 23 Mont. 562; 59 Pac. 917.

See note to section 1 of this article.

Clark v. Maher, 34 Mont. 400; 87 Pac. 274.

See note to section 11 of this article.

§ 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and

all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Gelsthorpe v. Furnell, 20 Mont. 303; 51 Pac. 267. A collateral inheritance or succession tax is not a tax on property. It is a tax or duty imposed by the state on the right to receive property by inheritance, succession or any deed or instrument to take effect after the death of the grantor.

N. W. L. Co. v. L. & C. Co., 28 Mont. 491; 72 Pac. 983. This section, in its definition of what may be subject to tax-

ation, includes all matters and things capable of private ownership.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 952. Stocks of a state bank or trust company fall within the definition of property given in this section and must be assessed to the owners at their full cash value, except to the extent that that value is represented in property, assessed to the bank or trust company.

§ 18. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

Danforth v. Livingston, 23 Mont. 562; 59 Pac. 917.

See note to section 1 of this article.

Mutual L. I. Co. v. Martien, 27 Mont. 440; 71 Pac. 471.

See note to section 4 of this article.

ARTICLE XIII.

PUBLIC INDEBTEDNESS.

§ 1. Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the state by operation or provision of law.

State v. Hickman, 11 Mont. 549; 29 Pac. 93.

§ 2. The legislative assembly shall not in any manner create any debt except by law which shall be irrevocable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election.

State v. Hickman, 11 Mont. 549; 29 Pac. 93.

State v. Helena, 24 Mont. 532; 63 Pac. 103.

§ 3. All moneys borrowed by or on behalf of the state or any county, city, town, municipality or other subdivision of the

state, shall be used only for the purpose specified in the law authorizing the loan.

State v. Dickerman, 16 Mont. 292; 40 Pac. 701. The act, approved February 18, 1895, providing that money loaned or advanced for school purposes on bonds of the district, which are after-

wards declared to be void by the supreme court of the state, may be repaid from the proceeds of the sale of subsequent bonds issued for school purposes, does not violate this section.

§ 4. The state shall not assume the debt, or any part thereof, of any county, city, town or municipal corporation.

§ 5. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the (value of the) taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

State v. Hickman, 11 Mont. 550; 29 Pac. 93.

Hotchkiss v. Marion, 12 Mont. 222; 29 Pac. 823. The legislative assembly has the power to provide by law for the funding of all funded debts and obligations of a county.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860. A favorable majority of all

the votes cast on the question of incurring indebtedness to build and furnish a county court house, at a general election at which the question is submitted, is sufficient, though such majority is not a majority of all the electors voting at such election. The words "For the loan" and "Against the loan," printed on the ballots, specify the nature of the loan.

§ 6. No city, town, township or school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding three per centum of the value of the taxable property therein, to be ascertained by the last assessment for the state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township or school district shall be void; *Provided, however*, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the tax-payers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Dunn v. Great Falls, 13 Mont. 59; 31 Pac. 1018. The city of Great Falls, under the act approved February 28, 1889, authorizing certain incorporated cities to incur indebtedness by the issuance of bonds to an amount not exceeding four per cent of their assessed valuation, issued bonds for the purposes therein specified. The act is not wholly in conflict with this section, but only to the excess above three per cent therein limited.

Atkinson v. Great Falls, 16 Mont. 372; 40 Pac. 877.

Palmer v. Helena, 19 Mont. 65; 47 Pac. 211. The funding by a city of an existing indebtedness by the issuance of bonds does not create a new or additional indebtedness, but changes the form of the liability. This section forbidding the creation by a city of an indebtedness greater than three per cent of the assessed value of property within its limits, unless the creation thereof is necessary and authorized by a vote of the tax payers for the purpose of constructing a sewer or water system, prohibits the creation of an indebtedness beyond

the three per cent limit for such purposes by a city, which had its sewerage system at the time of the adoption of the constitution.

State v. Helena, 24 Mont. 525; 63 Pac. 103. The city of Helena exceeded the constitutional limit of indebtedness. A water company furnished it water for municipal purposes under an ordinance providing for the obtaining of water for a certain period at a certain price, payable monthly, appropriating out of the yearly revenues sufficient money to pay for it, and ordering the city council for such term to levy annual taxes to meet the appropriation. The company could not recover for water so furnished; and the contract to furnish such water constitutes an indebtedness within the prohibition of this section.

Helena v. Rogan, 26 Mont. 472; 68 Pac. 801. A complaint by a city for the condemnation for a water supply of certain water rights is not defective for failing to allege that the water supply can be procured without incurring an indebtedness which, with the existing indebtedness, will exceed three per cent of the assessed valuation, or that the

limit was extended by a majority of the taxpayers voting for the proposition.

Jordan v. Andrus, 27 Mont. 25; 69 Pac. 118. "Indebtedness" means what a city owes, irrespective of the demands it may hold against others. The amount of cash on hand may be deducted from the "indebtedness," but claims against a county for road taxes collected for the city and the amount due from land owners for sidewalks cannot be so deducted.

Helena W. Co. v. Helena, 27 Mont. 206; 70 Pac. 514. A city which has exceeded its debt limit prescribed by this section, cannot incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and that if the warrant should not be paid, the city should not be liable therefor. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized.

ARTICLE XIV.

MILITARY AFFAIRS.

§ 1. The militia of the state of Montana shall consist of all able-bodied male citizens of the state between the ages of eighteen (18) and forty-five (45) years inclusive, except such persons as may be exempted by the laws of the state or of the United States.

§ 2. The legislative assembly shall provide by law for the organization, equipment, and discipline of the militia, and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

§ 3. The legislative assembly shall provide by law for maintaining the militia, by appropriations from the treasury of the state.

§ 4. The legislative assembly shall provide by law for the safe keeping of the public arms, military records, relics and banners of the state.

§ 5. When the governor shall, with the consent of the legislative assembly, be out of the state in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military forces of the state.

ARTICLE XV.

CORPORATIONS OTHER THAN MUNICIPAL.

§ 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time

of the adoption of this constitution, shall thereafter have no validity."

Morrison v. Clark, 24 Mont. 518; 63 Pac. 98. A mining company incorporated under general laws, though it had omitted to commence business prior

to the adoption of the constitution, is not affected by this section. The word "organized" used in this section is not appropriate.

§ 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the state; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; *Provided*, That any such laws shall be subject to future repeal or alterations by the legislative assembly.

Morrison v. Clark, 24 Mont. 520; 63 Pac. 99.

Allen v. Ajax M. Co., 30 Mont. 504; 77 Pac. 49.

§ 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state.

§ 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies, every stockholder shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

§ 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the state. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state and to connect at the state line with railroads of other states and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

B. A. P. Co. v. M. M. R., 16 Mont. 525; 41 Pac. 239. Under sections 5 and 7 of this article, a railroad, built by a private corporation and with its main line and spurs running to private mines

and ore houses, is a public use and may exercise the right of eminent domain. The right of one railroad to cross another is expressly given.

§ 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its

stock, property or franchise, with any other railroad corporation, express or other transportation company, owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express, or other transportation company owning or having control of a parallel or competing line.

State v. Railway Companies, 21 Mont. 228; 53 Pac. 625. One railroad company can lease its road to a parallel and competing road for a term of ten years, and such a lease is not a consolidation of the two roads. When two railroad companies have but one common ter-

minus, and are brought into competition between common terminal points by traffic arrangements with other roads, they are competing roads.

MacGinniss v. B. M. Co., 29 Mont. 453; 75 Pac. 94.

§ 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

Montana U. Co. v. Langlois, 9 Mont. 432; 24 Pac. 212. A railroad company cannot grant to one person the exclusive right to the use of a portion of its depot platform to deliver passengers departing, and to receive and solicit the

patronage of incoming passengers, to the exclusion of all other persons from the exercise of such rights.

B. A. & P. Co. v. M. U. Railway, 16 Mont. 525; 41 Pac. 239.

See note to section 5 of this article.

§ 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this constitution in binding form.

§ 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals;

and the police powers of the state shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

B. A. & P. Co. v. M. U. Railway, 16 Mont. 536; 41 Pac. 243.

§ 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

Kelly v. Clark, 21 Mont. 336; 53 Pac. 970. The purchase of a mine which the stockholders knew was not worth over \$125,000 and payment therefor in stock whose par value is \$7,500,000, and which is repurchased by the stockholders with full knowledge of the transaction at 2½

per cent of its par value, is fraudulent as to a creditor, and the stock will be treated as unpaid to the extent of the difference between the actual value of the mine and the nominal value of the stock.

§ 11. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.

Criswell v. M. C. R. Co., 18 Mont. 168; 44 Pac. 525. This section is self executing as a prohibition upon foreign corporations from enjoying within the state any greater privileges than are enjoyed by like corporations created under the laws of the state; and section 697, fifth division of the Compiled Statutes, declaring the liability of the corporation to an employee injured through the negligence of his superior to be the same as if the employee were a passenger, imposes on domestic railroad corporations a burden not imposed on foreign railroad companies operating within the state, and was annulled by the adoption of the constitution.

M. B. L. Co. v. Winne, 20 Mont. 35; 49 Pac. 451. The purpose of section 1034 of the Civil Code was to make valid contracts made by foreign corporations which were voidable by reason of a failure to file certain statements and certificates required by law, and does not refer to, or make valid contracts of such corporations void for other reasons.

§ 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

State v. Mayor, 30 Mont. 343; 76 Pac. 760.

§ 13. The legislative assembly shall pass no law for the

Such legislation does not violate this constitutional provision.

State v. Bank, 21 Mont. 51; 52 Pac. 733. The Political Code, imposing a license upon banks and banking institutions in this state, does not conflict with the constitution, although national banks are not subject to the license.

Wastl v. M. U. R. Co., 24 Mont. 168; 61 Pac. 12.

MacGinniss v. B. & M. Co., 29 Mont. 458; 75 Pac. 96. It is not against the public policy of the state for one mining corporation to hold and vote stock in another of like character.

State v. Aetna B. Co., 34 Mont. 388; 87 Pac. 271.

Helena P. Co. v. Spratt, 35 Mont. 131; 88 Pac. 775. A foreign corporation authorized by the laws of the state where it is organized to build a dam across the Missouri river in Montana and maintain an electric power plant in connection therewith, is not clothed by the constitution or laws of this state with the right of eminent domain.

benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed.

State v. Dickerman, 16 Mont. 292; 40 Pac. 701. The act approved February 18, 1895, providing that money advanced for school purposes on bonds of the district, afterwards declared to be void by the supreme court, may be repaid from the proceeds of bonds subsequently issued, is not retrospective in its operation and within the inhibition of this section.

M. B. Co. v. Winne, 20 Mont. 36; 49 Pac. 451. The purpose of section 1034 of the Civil Code was to make valid contracts made by foreign corporations, voidable by reason of a failure to file certain statements and certificates required by law. This is a curative law and not retrospective.

§ 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquired by purchase or otherwise, any other competing line of telegraph or telephone.

MacGinniss v. B. & M. Co., 29 Mont. 453; 75 Pac. 94.

State v. Mayor, 30 Mont. 340; 76 Pac. 760. Where a city council refuses to designate the location of poles for a telephone line, and requires the wires to be laid in conduits under the streets, *mandamus* can compel the council to designate the location of the poles. A general law relating to telephone corporations is not modified by the statutes concerning the government of cities.

State v. Helena, 34 Mont. 71; 85 Pac.

744. Chapter LV of the Session Laws of 1905, authorized any person or corporation, engaging in the telegraph, telephone, electric light or power business to construct necessary poles and appliances on any of the public highways, but added a proviso that the provisions of this act shall not apply to public roads and highways within the limits of incorporated cities or towns. The proviso is contrary to this section and invalid and must be eliminated from the act.

§ 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other state or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state, in all matters that may arise as if said consolidation had not taken place.

§ 16. It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in

the service of such person, company or corporation, by reason of negligence of such person, company or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

Schmidt v. Montana R. Co., 15 Mont. 114; 38 Pac. 227.

Criswell v. M. C. R. Co., 18 Mont. 171; 44 Pac. 526.

§ 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

§ 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

§ 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

§ 20. No incorporation, stock company, person or association of persons in the state of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

MacGinniss v. B. & M. Co., 29 Mont. 452; 75 Pac. 94. To subject offenders to penalties which the legislature might impose, there must be shown a specific intent to do the prohibited act, or that the association or combination tends to accomplish the same result. The evidence does not show an intent or necessary tendency of combining corporations to fix the price or regulate the production of copper, such as is prohibited by this section.

hold and vote stock in other corporations of like character.

State v. Cudaby P. Co., 33 Mont. 183; 82 Pac. 834. Section 321 of the Penal Code, prohibiting the formation of combinations or trusts for the purpose of fixing the price or regulating the production of articles of commerce, and section 325 of the same code, to the effect that such prohibition shall not apply to persons engaged in agricultural and horticulture, are dependent upon each other and void.

Mining corporations are permitted to

ARTICLE XVI.

MUNICIPAL CORPORATIONS AND OFFICERS.

§ 1. The several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the

union, are hereby declared to be the counties of the state until otherwise established or changed by law.

Sackett v. Thomas, 25 Mont. 240; 64 Pac. 506.

§ 2. The legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

§ 3. In all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed, less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; *Provided*, That nothing in this section shall prevent the re-adjustment of county lines between existing counties.

Holliday v. Sweet Grass Co., 19 Mont. 367; 48 Pac. 553. The county of Sweet Grass was formed of territory previously included in the counties of Park, Yellowstone and Meagher, and was liable to pay interest upon its portion of the debt of each county until its warrant

was issued in payment thereof.

Sackett v. Thomas, 25 Mont. 240; 64 Pac. 506. The constitution recognizes the power of the legislature to create new counties, or change those already established, or alter their boundaries.

§ 4. In each county there shall be elected three county commissioners, whose term of office shall be six years; provided, that the term of office of those elected November 6th, 1900, shall expire on the first Monday in January, 1907, provided further, that at the general election to be held in November, 1902, (in counties where commissioners are to be elected that year), three commissioners shall be elected whose term expire on the first Monday in January, 1907; provided further, that at the general election to be held in November, 1906, one commissioner shall be elected for a term of two years, one commissioner shall be elected for a term of four years, and one commissioner shall be elected for a term of six years, whose term of office shall commence on the said first Monday in January, 1907; and provided further, that at each general election thereafter commencing with the general election to be held in November, 1908, one commissioner shall be elected for a term of six years. A vacancy in the board of county commissioners shall be filled by appointment by the judge of the judicial district in which the vacancy occurs.

Section 4 is given as amended by act approved February 26, 1901 (7th Sess., p. 208), which was declared to be in force by proclamation by the Governor December 5, 1902.

State v. Commissioners, 34 Mont. 426; 87 Pac. 450. This amendment does not violate section 31, article V, or section 9, article XIX of the constitution.

State v. Tooker, 15 Mont. 9; 37 Pac. 840. The amendment to this section pro-

posed by the legislative assembly by the act approved February 23, 1891, was not

advertised as required by the constitution and was not adopted.

State v. Mayhew, 21 Mont. 96; 52 Pac. 983. The legislative assembly may appoint provisionally, in the act creating a new county, the officers including com-

missioners. The commissioners elected under the act creating Ravalli county at the general election in 1894 were entitled to serve for the full constitutional term. *State v. Acton*, 31 Mont. 42; 77 Pac. 301.

§ 5. There shall be elected in each county the following officers: One county clerk, who shall be clerk of the board of the county commissioners and ex-officio recorder; one sheriff; one treasurer, who shall be collector of taxes; *Provided*, That no person shall hold the office of county treasurer for more than two consecutive terms; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of two years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election.

Lloyd v. Silver Bow Co., 11 Mont. 413; 28 Pac. 453.

Meagher Co. v. Gardner, 18 Mont. 115; 44 Pac. 408. Sureties on the official bond of a county assessor, on whom was imposed the duty of collecting poor taxes and whose bond was conditioned that he would pay over the money so collected, are estopped from contending that the statute imposing such duty is in conflict with this section.

State v. Mayhew, 21 Mont. 96; 52 Pac. 983.

State v. Granite Co., 23 Mont. 252; 58 Pac. 439.

State v. Dickinson, 26 Mont. 392; 68 Pac. 469. The office of county auditor is not expressly provided for in the constitution.

Mutual L. I. Co. v. Martien, 27 Mont. 439; 71 Pac. 471. Section 3940 of the Political Code providing that the assessor must collect the taxes on all personal

property, when, in his opinion, such taxes are not a lien on sufficient real property to secure payment thereof, is void. The legislature has no power to vest any person other than the treasurer with power to collect taxes on property.

Butte v. Weston, 29 Mont. 127; 74 Pac. 416. Article XVI of the constitution deals with municipal corporations and has special references to counties.

See note to section 4, Article XII.

State v. Acton, 31 Mont. 39; 77 Pac. 301. This section provides that there shall be elected in each county one county superintendent of schools. Section 1171 of the Political Code providing that in case of a tie vote for a county officer, the county commissioners shall appoint some eligible person to fill the office, is invalid as to county superintendent of schools and officers named in the constitution.

§ 6. The legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

State v. Long, 21 Mont. 33; 52 Pac. 647.

State v. Dickinson, 26 Mont. 392; 68

Pac. 469. Authority for the creation of the office of county auditor may be found in this section.

ARTICLE XVII.

PUBLIC LANDS.

§ 1. All lands of the state that have been, or that may hereafter be granted to the state by congress, and all lands acquired by gift or grant or devise, from any person or corporation, shall be public lands of the state, and shall be held in trust for the

people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised; and none of such land, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States. Said lands shall be classified by the board of land commissioners, as follows: First, lands which are valuable only for grazing purposes. Second, those which are principally valuable for the timber that is on them. Third, agricultural lands. Fourth, lands within the limits of any town or city or within three miles of such limits; *Provided*, That any of said lands may be re-classified whenever, by reason of increased facilities for irrigation or otherwise, they shall be subject to different classification.

State v. Cook, 17 Mont. 536: 43 Pac. 930.

State v. Wright, 17 Mont. 573: 44 Pac. 92. The provisions of this article relate to such lands as the state has

acquired or may acquire after the same are selected under the laws provided for that purpose, and are not applicable to lands granted to the state under the act of congress, approved August 18, 1894.

§ 2. The lands of the first of said classes may be sold or leased, under such rules and regulations as may be prescribed by law. The lands of the second class may be sold, or the timber thereon may be sold, under such rules and regulations as may be prescribed by law. The agricultural lands may be either sold or leased, under such rules and regulations as may be prescribed by law. The land of the fourth class shall be sold in alternate lots of not more than five acres each, and not more than one-half of any one tract of such lands shall be sold prior to the year one thousand nine hundred and ten (1910).

State v. Barret, 26 Mont. 65; 66 Pac. 502.

§ 3. All other public lands may be disposed of in such manner as may be provided by law.

ARTICLE XVIII.

LABOR.

§ 1. The legislative assembly may provide for a bureau of agriculture, labor and industry, to be located at the capital and be under the control of a commissioner appointed by the governor subject to the confirmation of the senate. The commissioner shall hold his office for four years, and until his successor is appointed and qualified; his compensation shall be as provided by law.

Lloyd v. Silver Bow Co., 11 Mont. 415; 28 Pac. 455.

§ 2. It shall be unlawful for the warden or other officer of any state penitentiary or reformatory institution in the state of Montana, or for any state officer to let by contract to any person or persons or corporation the labor of any convict confined within said institution.

§ 3. It shall be unlawful to employ children under the age of sixteen (16) years of age in underground mines.

§ 4. A period of eight hours shall constitute a day's work on all works or undertakings carried on or aided by any municipal, county or state government, and on all contracts let by them, and in mills and smelters for the treatment of ores, and in underground mines.

§ 5. The legislature by appropriate legislation shall provide for the enforcement of the provisions of this Article.

Sections three (3), four (4) and five (5), of this article, are given as added by act approved March 3, 1903 (Acts 1903, ch. 49), which was declared to be in force by proclamation by the Governor December 8, 1904.

ARTICLE XIX.

MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS.

§ 1. Members of the legislative assembly and all officers, executive, ministerial or judicial, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly, or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God." And no other oath, declaration or test shall be required as a qualification for any office or trust.

§ 2. The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state.

§ 3. The legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the state or upon lands of the public domain

the control of which may be conferred by congress upon this state, and to otherwise protect the same.

§ 4. The legislative assembly shall enact liberal homestead and exemption laws.

Ferguson v. Speith, 13 Mont. 496; 34 Pac. 1022. The laws enacted under this section must receive a liberal construction in favor of the debtor. A partner is entitled as against the creditors of the firm to claim and hold a homestead in partnership estate, to be selected by the owner, from forced sale or other final process.

Mitchell v. McCormick, 22 Mont. 252; 56 Pac. 218.

Yerrick v. Higgins, 22 Mont. 509; 57 Pac. 98. The mode of obtaining the exemption and the amount and character thereof are left to the legislature to provide.

Dayton v. Ewart, 28 Mont. 155; 72 Pac. 421.

§ 5. No perpetuities shall be allowed, except for charitable purposes.

§ 6. All county officers shall keep their offices at the county seats of their respective counties.

§ 7. In the disposition of the public lands granted by the United States to this state, preference shall always be given to actual settlers thereon, and the legislative assembly shall provide by law for carrying this section into effect.

§ 8. The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alteration or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two or more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

§ 9. Amendments to this constitution may be proposed in

either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately; *Provided*, however, that not more than three amendments to this constitution shall be submitted at the same election.

State v. Tooker, 15 Mont. 10; 37 Pac. 841. This section is mandatory. A constitutional amendment, approved February 23, 1891, relating to county commissioners, was published by the secretary of state in the newspapers for two weeks before the election in 1892, and for no longer period. The noncompliance with the requirement for publication renders the adoption of the proposed amendment nugatory.

Durfee v. Harper, 22 Mont. 361; 56 Pac. 584. A proposed amendment to the constitution, relating to the justices of the supreme court, approved March 3,

1897, was duly advertised, voted for by a majority of the qualified voters, and declared adopted; but it had not been entered in full on the respective journals of the two houses of the legislative assembly and was void.

State v. Board, 34 Mont. 428; 87 Pac. 450. The amendment to section 4, article XVI of the constitution, concerning county commissioners, approved February 26, 1901, must be considered as one scheme, and separate amendments distinguished by numbers, so that they may be voted on separately, are not required.

SECTION XX.

SCHEDULE.

That no inconvenience may arise by reason of changing from a territorial to a state form of government, it is declared as follows:

§ 1. All laws enacted by the legislative assembly of the territory of Montana and in force at the time the state shall be admitted into the union and not inconsistent with this constitution or the constitution or laws of the United States of America, shall be and remain in full force as the laws of the state until altered or repealed, or until they expire by their own limitation; *Provided*, That whenever in said laws the words, "Territory," "Montana Territory" or "Territory of Montana" occur, the words "State" or "State of Montana" shall be appropriately substituted and read therefor; *And, provided further*, that the duties which now by law devolve upon probate judges as jury commissioners and in relation to issuing marriage licenses and filing and recording marriage certificates, and the duties as ex-officio clerks of their own courts, shall, until otherwise provided by law, de-

volve upon and be performed by the clerks of district courts, in their respective counties; *And, provided further*, That the duties of probate judges now imposed by law relative to town sites and to the approval of bonds of other county officers shall, until otherwise provided by law, be performed by the district judges in the several counties in their respective districts.

State v. Ah Jim, 9 Mont. 171; 23 Pac. 77.

State v. Kenney, 9 Mont. 395; 24 Pac. 97. The obligations of the territory were assumed by the state, and the constitution protects the rights of individuals, associations and corporations, existing when Montana was admitted into the Union. All laws of the territory inconsistent with the constitution, were amended or repealed at the same time.

Wallace v. Helena R. Co., 10 Mont. 46; 25 Pac. 284.

State v. McHatton, 10 Mont. 380; 25 Pac. 1047. The office of the probate judge was abolished when Montana was admitted into the Union, but the jury commission was preserved and persons were designated to fill the vacancy caused by the change.

In re McFarland's Estate, 10 Mont. 447; 26 Pac. 187. Sections 324 and 325 of the probate practice act providing for appeals directly to the supreme court, enacted prior to the adoption of the constitution were in conflict with sections 1869 and 1932 of the Revised Statutes of the United States and void, and did not, upon the adoption of the constitution, become laws of the state.

State v. Kingslv, 10 Mont. 544; 26 Pac. 1067.

State v. Myers, 11 Mont. 366; 28 Pac. 651. The part of section 6 of the criminal practice act, enacted by the legislative assembly of the territory, conferring upon the district and justices courts concurrent jurisdiction in all misdemeanors, is invalid and did not become a law of the state upon the adoption of the constitution.

Lloyd v. Silver Bow Co., 11 Mont.

414; 28 Pac. 454. The adoption of the laws of the territory as the laws of the state did not fix the compensation of a sheriff elected before the adoption of the constitution, and deprived the first legislative assembly of the power to pass an act decreasing the emoluments of his office.

State v. Hickman, 11 Mont. 546; 29 Pac. 93.

State v. Kenney, 11 Mont. 555; 29 Pac. 90.

See note to section 12, Article XII.

State v. Court, 14 Mont. 479; 37 Pac. 8. Sections 1495, *et seq.*, of the fifth division of the Compiled Statutes, granting to the owners of mining claims a right of way across the claims of others, and providing for the assessment of damages by commissioners are not abrogated, but modified as to the method of determining the damages, leaving the jurisdiction and procedure in other respects unchanged.

Wastl v. M. U. R. Co., 24 Mont. 170; 61 Pac. 13. The rights of the individual citizen, acquired under the laws of the territory are protected and enforced as effectively as if the constitution had not been adopted.

State v. Court, 24 Mont. 558; 63 Pac. 398. When the constitution was adopted, the same procedure which had been provided by the legislature of the territory under the practice act was continued in force; and this has been re-enacted substantially in the codes of 1895.

State v. Hays, 27 Mont. 176; 70 Pac. 321.

M. O. P. Co. v. B. & M. Co., 27 Mont. 307; 70 Pac. 1119.

See note to section 23, article III.

§ 2. All lawful orders, judgments and decrees in civil causes, all contracts and claims, and all lawful convictions, judgments and sentences in criminal actions, made and entered, or pronounced by the courts within the territory of Montana, and in force at the time the state shall be admitted into the union, shall continue and be and remain in full force in the state unaffected in any respect by the change from a territorial to a state form of government, and may be enforced and executed under the laws of the state.

State v. Kenney, 9 Mont. 395; 24 Pac. 97.

Edgerton v. Edgerton, 12 Mont. 148; 29 Pac. 974. A decree of divorce of the district court of the territory must be regarded as if pronounced by a district

court of the state. The transformation from a territorial to a state form of government is for many purposes to be considered as a continuity of government.

§ 3. No crime or criminal offense committed against the laws of the territory of Montana shall abate, or be in any wise affected,

by reason of the change from a territorial to a state form of government; but the same shall be deemed and taken to be an offence against the laws of the state, and the appropriate courts of the state shall have jurisdiction over and to hear and determine the same; *Provided*, That this section shall not in any wise be construed to change the law of the statute of limitations, or the due effect or application of the same.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

Estate of Tuohy, 23 Mont. 308; 58 Pac. 723. Upon the organization of the state government, probate jurisdiction was given to the district courts by the constitution, and thereafter appeals to the supreme court from judgments and orders therein were possible only by

classifying them under the head of special proceedings.

Clark v. Silver Bow Co., 17 Mont. 82; 42 Pac. 104. The legislature has the power under this section to reduce the salary of a clerk of the district court, elected at the time of the admission of the state, from that allowed by the law of the territory.

§ 4. Except as herein otherwise provided, the word "district" shall be substituted and read in lieu of the word "probate" in the terms "probate court" or "probate judge" whenever the same occur in the laws of the territory of Montana, and all said laws which by their terms apply to probate courts or probate judges shall, except as in this constitution otherwise provided, upon a change from territorial to state government, be deemed and taken to apply to district courts and district judges; *Provided*, That all laws allowing fees to probate judges are hereby repealed.

§ 5. Clerks of district courts, until otherwise provided by law, shall each perform the duties and be entitled to the same fees as now provided by law for clerks of the district courts of the territory, and until otherwise provided by law shall also perform the services and be entitled to fees therefor that are now provided for clerks of probate courts.

§ 6. Upon a change from territorial to state government the seals in use by the supreme court and the territorial district courts in and for the several counties respectively, shall pass to and become, until otherwise provided by law, the seals respectively of the supreme court and of the district courts of the state in such counties.

§ 7. Prosecutions for criminal offences against the laws of the territory of Montana, pending at the time the state shall be admitted into the union shall not abate; but the same shall continue and be prosecuted in the name of the state of Montana, and the title of every such action shall be changed to conform to this provision.

State v. Ah Jim, 9 Mont. 172; 23 Pac. 77.

§ 8. Parties who, at the time of the admission of the state into the union, may be confined under lawful commitments, or otherwise lawfully held to answer for alleged violations of any of the criminal laws of the territory of Montana, shall continue to be so

confined or held until discharged therefrom by the proper courts of the state.

State v. Ah Jim, 9 Mont. 172; 23 Pac. 77.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

§ 9. All writs, processes, prosecutions, actions, causes of action, defenses, claims and rights of individuals, associations and bodies corporate existing at the time the state shall be admitted into the union, shall continue and be respectively executed, proceeded with, determined, enforced and protected under the laws of the state.

State v. Kenney, 9 Mont. 395; 24 Pac. 97.

State v. Kingsly, 10 Mont. 544; 26 Pac. 1067.

Wastl v. M. U. R. Co., 24 Mont. 169; 61 Pac. 12. The rights which had accrued under section 697, fifth division

Compiled Statutes, giving to an employe injured by the negligence of a superior a right of action against the master, prior to the repeal of the law by the constitution, were preserved by this provision of the constitution to be enforced under the laws of the state.

§ 10. All undertakings, bonds, obligations and recognizances in force at the time the state shall be admitted into the union, which was executed to the territory of Montana, or any officer thereof in his official capacity, or to any official board for the benefit of the territory of Montana, are hereby respectively assigned and transferred to the state of Montana, to the state officer successor to said territorial officer, or to the official board successor to the aforesaid official board, for the use of the state, as the case may be, and shall be as valid and binding as if executed under state law to the state, or state officer in his official capacity, or official board, for the benefit of the state; and all fines, taxes, penalties and forfeitures due or owing to the territory of Montana or to any county, school district, or municipality therein, at the time the state shall be admitted into the union, are hereby respectively assigned and transferred, and the same shall be payable to the state, county, school district or municipality, as the case may be, and payment thereof may be enforced under the laws of the state.

State v. Kenney, 9 Mont. 395; 24 Pac. 97.

§ 11. All property, real and personal, and all moneys, credits, claims, demands and choses in action of every kind, belonging to the territory of Montana at the time the state shall be admitted into the union, are hereby assigned and transferred to, and shall be vested in, and become the property of the state of Montana.

§ 12. All obligations of the territory of Montana, existing, in force and unpaid at the time of the admission of the state into the union are hereby assumed by the state, which shall and will well and truly pay the same.

State v. Kenney, 9 Mont. 395; 24 Pac. 97.

State v. Hickman, 11 Mont. 550; 29 Pac. 94.

§ 13. All matters, cases and proceedings pending in any probate court in the territory of Montana, at the time the state shall be admitted into the union, and all official records, files, moneys,

and other property of, or pertaining to such court, are hereby transferred to the district court in and for the same county, and such district court shall have full power and jurisdiction to hear, determine and dispose of all such matters, cases and proceedings.

In *re Dewar's Estate*, 10 Mont. 438; 25 Pac. 1027. Where an appeal in a probate case was perfected prior to the adoption of the constitution, the appellate jurisdiction of the district court in

such case was not ousted by the provisions of the constitution abolishing probate courts and transferring pending probate matters to the district court for the exercise of original jurisdiction.

§ 14. All actions, cases and proceedings, and matters which shall be pending in the supreme and district courts of Montana territory at the time of the admission of the state into the union whereof the United States circuit or district court might have had jurisdiction, had such court existed at the commencement of such actions, cases, proceedings and matters, respectively, shall be transferred to said United States circuit and district courts respectively; and all the files, records, indictments and proceedings relating to such actions, cases, proceedings and matters shall be transferred to said United States courts; *Provided*. That no civil action, cause or proceeding to which the United States is not a party, shall be transferred to either of said United States courts except upon written request of one of the parties thereto and in the absence of such request, such case shall be proceeded with in the proper state courts.

§ 15. All actions, cases, proceedings and matters pending in the supreme and district courts of the territory of Montana at the time the state shall be admitted into the union, and all files, records and indictments relating thereto, except as otherwise provided herein, shall be appropriately transferred, as may be proper to the supreme and district courts of the state, respectively, and all such actions, cases and matters shall be proceeded with in the proper state courts.

§ 16. Upon a change from a territorial to a state government, and until otherwise provided by law, the great seal of the territory shall be deemed and taken to be the great seal of the state of Montana.

§ 17. All territorial, county and township officers now occupying their respective positions under the laws of the territory of Montana, or of the United States of America, shall continue and remain in their respective official positions and perform the duties thereof as now provided by law after the state is admitted into the union, and shall be considered state officers until their successors in office shall be duly elected and qualified, as provided by ordinance, notwithstanding any inconsistent provisions in this constitution, and shall be entitled to the same compensation for their services as is now established by law; *Provided*. That the compensation for justices of the supreme court, governor and secretary of the territory shall be paid by the state of Montana.

Done in open convention at the city of Helena, in the territory of Montana, this seventeenth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

WILLIAM A. CLARK, <i>President</i> .	S. S. HOBSON,
E. D. AIKEN, (1)	JOSEPH HOGAN, (10)
WALTER M. BICKFORD,	THOMAS JOYES, (11)
J. F. BRAZELTON,	ALLEN R. JOY,
PETER BREEN,	J. E. KANOUSE,
DAVID G. BROWNE,	W. J. KENNEDY,
SIMMON R. BUFORD, (2)	H. KNIPPENBERG,
WILLIAM MASON BULLARD, (3)	HIRAM KNOWLES,
WALTER A. BURLEIGH, (4)	CONRAD KOHRS,
ALEX F. BURNS,	C. H. LOUD,
ANDREW J. BURNS, (5)	LLEWELLYN A. LUCE, (12)
EDWARD BURNS,	MARTIN MAGINNIS,
JAMES E. CALLAWAY, (6)	J. E. MARION, (13)
EDWARD CARDWELL,	CHARLES S. MARSHALL, (14)
B. PLATT CARPENTER,	WM. MAYGER,
MILTON CAUBY,	P. W. MCADOW,
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ORDINANCE NO. I.

FEDERAL RELATIONS.

BE IT ORDAINED: First. That perfect toleration of religious sentiment shall be secured and that no inhabitant of the state of Montana shall ever be molested in person or property, on account of his or her mode of religious worship.

Second. That the people inhabiting the said proposed state of Montana, do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, that the lands belonging to citizens of the United States, residing without the said state of Montana, shall never be taxed a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the said state of Montana on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein contained shall preclude the said state of Montana from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, but said last named lands shall be exempt from taxation by said state of Montana so long and to such extent as such act of congress may prescribe.

Third. That the debts and liabilities of said territory of Montana shall be assumed and paid by said state of Montana.

Fourth. That provision shall be made for the establishment and maintenance of a uniform system of public schools, which shall be open to all the children of said state of Montana and free from sectarian control.

State v. Yellowstone Co., 12 Mont.
505; 31 Pac. 79.

State v. Long, 21 Mont. 30; 52 Pac.
646.

See note to section 1, article XI.

Fifth. That on behalf of the people of Montana, we in convention assembled, do adopt the constitution of the United States.

Sixth. That the ordinances in this article shall be irrevocable without the consent of the United States and the people of said state of Montana.

Seventh. The state hereby accepts the several grants of land from the United States to the state of Montana, mentioned in an

act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington, to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Approved February 22d, 1889, upon the terms and conditions therein provided.

State v. Cook, 17 Mont. 534; 43 Pac. 929. The state accepted the lands for the purposes specified and by legislation has provided for the erection of a capitol building from a fund to be created from the disposition of these lands. The state is an agent to carry out the objects of

the donation, and this fund is not a state fund and its disbursement is not an expenditure of the state.

State v. Barret, 26 Mont. 64; 66 Pac. 505.

See note to section 20, article VII.

ORDINANCE II.

ELECTIONS.

Be it Ordained by the Convention assembled to form a Constitution for the State of Montana:

First. That an election shall be held throughout the territory of Montana on the first Tuesday of October, 1889, for the ratification or rejection of the constitution framed and adopted by this convention.

State v. Kenney, 9 Mont. 236; 23 Pac. 737. An ordinance, framed by the constitutional convention and appended to the constitution and with it adopted by the people had the same force as a revision of the constitution; and the effect of an ordinance upon the statute of the territory, providing for the canvass of votes cast for members of the legis-

lative assembly is to modify its provisions so far as it is necessary to give the ordinance full scope.

Floyd v. Silver Bow Co., 11 Mont. 413; 28 Pac. 454.

State v. Mayhew, 21 Mont. 96; 52 Pac. 983.

See note to section 4, article XVI.

Second. At said election the constitution framed and adopted by this convention shall be submitted to the people of the territory for their ratification or rejection, and all persons who are then qualified electors under the laws of this territory, shall be qualified to vote for the ratification or rejection thereof.

Third. Said elections shall be held at the several polling places and precincts throughout the territory appointed for the holding of elections under the laws of the territory, and shall be conducted in the manner prescribed by the laws of the territory regulating elections. The boards of county commissioners of the several counties of the territory shall appoint judges and clerks of such election in each of said polling places and precincts in the same manner as is now required by law for the appointment of judges and clerks of general elections in the territory.

Fourth. Each elector voting at said election shall have written or printed upon the ticket he may deposit in the ballot box, the words "For the Constitution" or "Against the Constitution."

Fifth. The votes cast at said election for the adoption or rejection of said constitution shall be canvassed by the canvassing

boards of the respective counties not later than fifteen days after said election, or sooner, if the returns from all of the precincts shall have been received and in the manner prescribed by the laws of the territory of Montana for canvassing the votes at general elections in said territory, and the returns of said election shall be made to the secretary of the territory, who with the governor, and the chief justice of the territory, or any two of them shall constitute a board of canvassers who shall meet at the office of the secretary of the territory on, or before, the thirtieth day after the election, and canvass the votes so cast and declare the result.

State v. Kenney, 9 Mont. 236; 23 Pac. 737.

Sixth. That on the first Tuesday in October, 1889, there shall be elected by the qualified electors of Montana, a governor, a lieutenant-governor, a secretary of state, an attorney general, a state treasurer, a state auditor, a state superintendent of public instruction, one chief justice, and two associate justices of the supreme court, a judge for each of the judicial districts established by this constitution, a clerk of the supreme court, and a clerk of the district court in and for each county of the state, and the members of the legislative assembly provided for in this constitution. The terms of officers so elected shall begin when the state shall be admitted into the union and shall end on the first Monday in January, 1893, except as otherwise provided.

State v. Kenney, 9 Mont. 236; 23 Pac. 737.

Seventh. There shall be elected at the same time one representative in the Fifty-first congress of the United States.

State v. Kenney, 9 Mont. 237; 23 Pac. 737.

Eighth. The votes for the above officers shall be returned and canvassed as is provided by law, and returns shall be made to the secretary of the territory and canvassed in the same manner and by the same board as is the vote upon the constitution, except as to clerk of the district court.

State v. Kenney, 9 Mont. 236; 23 Pac. 737.

Ninth. There shall also be elected at the same time the following county and township officers: Three county commissioners, one clerk of the board of commissioners and ex-officio recorder, one sheriff, one county treasurer, one county superintendent of common schools, one county surveyor, one county assessor, one coroner, one public administrator, one county attorney, two justices of the peace, and two constables for each township. The terms of office for the above named officers shall begin upon the admission of the state and end upon the first Monday of January, A. D. 1893, except as to county treasurer, whose term shall begin on the first Monday in March succeeding his election, and end on the first Monday of March, A. D. 1893, and also as to county commissioners, whose terms are otherwise provided for in this constitution.

State v. Kenney, 9 Mont. 236; 23 Pac. 737. A statute of the territory enacted prior to the enabling act and the adoption of the constitution, provided that the canvass of the votes cast for members of the legislative assembly should be made by boards of county commissioners of the respective counties in the territory, and certificates of election issued by the clerk thereof. This statute was in conflict with the enabling act and constitution, and did not remain

in force after the adoption of the constitution. The board of canvassers provided for in this ordinance, consisting of the governor, chief justice and secretary of the territory, was the legal canvassing board to canvass the votes at the election in 1889 for members of the legislative assembly and declare the result, and a certificate of election issued by said board was *prima facie* evidence of the right of a person to be a member of the house of representatives.

Tenth. The votes for the above county and township officers and for clerk of the district court, shall be returned and canvassed and certificates of election to said officers issued as is now provided by law.

Eleventh. Notice of the election for the adoption or rejection of this constitution, and for state, district, county and township officers shall be given by the clerks of the several boards of county commissioners in the same manner as notice of general elections for delegate to congress and county officers is required to be given by the existing laws of the territory.

Twelfth. That the provisions of this ordinance shall apply only to the election and to the officers elected on the first Tuesday of October, 1899.

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I--POLITICAL CODE.

AN ACT TO ESTABLISH A POLITICAL CODE.

Be it enacted by the Legislative Assembly of the State of Montana:

TITLE OF THE ACT.

1. (§ 1.) *Division of the Codes.*—This act shall be known as the political code of the state of Montana, and is divided into five parts, as follows:

- Part I. The sovereignty of the state, and the political rights and duties of all persons subject to its jurisdiction.
- Part II. The chief political divisions and seat of government.
- Part III. The government of the state.
- Part IV. The government of counties, cities, and towns.
- Part V. The definition and sources of law; the common law; the publication and effect of the codes; and the express repeal of statutes.

PRELIMINARY PROVISIONS.

- Section 2. *When code takes effect.*
- “ 3. *Not retroactive.*
- “ 4. *Construction of the political code.*
- “ 5. *Provisions similar to existing laws, how construed.*
- “ 6. *Tenure of office preserved.*
- “ 7. *Construction of repeal as to certain officers.*
- “ 8. *Actions, etc., not affected by this code.*
- “ 9. *Limitations shall continue to run.*
- “ 10. *Holidays.*
- “ 11. *Computation of time.*
- “ 12. *Certain acts not to be done on holidays.*
- “ 13. *Seal defined.*
- “ 14. *Joint authority.*
- “ 15. *Words and phrases.*
- “ 16. *Certain terms used in this code defined.*

Section 17. Statutes, laws, or rules inconsistent with code repealed.

“ 18. *Certain statutes preserved.*

“ 19. *This act, how cited, etc.*

2. (§ 2.) *When code takes effect.*—This code takes effect at twelve o'clock, noon, on the first day of July, A. D. 1895.

Dowty v. Pittwood, 23 Mont. 117; 57 Pac. 728. This section was inoperative upon existing laws before the first day of July, 1895.

3. (§ 3.) *Not retroactive.*—No part of it is retroactive, unless expressly so declared.

Teralta L. C. v. Shaffer, 116 Cal. 522; 48 Pac. 613.

4. (§ 4.) *Construction of the political code.*—The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.

Nelson v. G. N. R. Co., 28 Mont. 322; 72 Pac. 650. The doctrine that “a statute in affirmance of the common law is to be construed as was the rule by that law” would, perhaps, be modified by this section.

Lawrence v. Westlake, 28 Mont. 506; 73 Pac. 120. The code establishes the law of this state respecting the subjects to which it relates.

City I. Co. v. Babcock, 139 Cal. 692; 73 Pac. 666.

5. (§ 5.) *Provisions similar to existing laws, how construed.*—The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

6. (§ 6.) *Tenure of office preserved.*—All persons who at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislature, and excepting offices filled by appointment.

7. (§ 7.) *Construction of repeal as to certain officers.*—When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the four codes, such office ceases at the time the codes take effect.

8. (§ 8.) *Actions, etc., not affected by this code.*—No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as applicable.

9. (§ 9.) *Limitations shall continue to run.*—When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation is prescribed in this code, the time which has

already run shall be deemed part of the time prescribed as such limitation by this code.

Guiterman v. Wishon, 21 Mont. 459; 54 Pac. 566.

Wilson v. Pickering, 28 Mont. 439; 72 Pac. 823. The status of a case is not affected by the codes of 1895 when the statute of limitations has fully run, unless tolled, prior to the time when the codes took effect.

In re Tuohy's Estate, 33 Mont. 246; 83 Pac. 490. It was contended by lega-

tees that an application, by an executor to sell real estate of a decedent is barred by this and other sections prescribing the time within which actions may be brought to recover real estate, or the possession thereof, and that the application was not made before the limitation had run. The application is not an action of this nature.

10. (§ 10.) *Holidays.*—Holidays within the meaning of this code, are every Sunday, the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday of September, the twenty-fifth day of December, every day on which an election is held throughout the state; and every day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving or holiday. If the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December, fall upon a Sunday, the Monday following is a holiday.

Butte v. Paltrovich, 30 Mont., 24; 75 Pac. 522. An ordinance of Butte makes it unlawful for any person to keep open a pawn shop, loan office or second hand store after six o'clock P. M., except on days preceding holidays, when the busi-

ness may be conducted until ten P. M. This section provides for more than sixty holidays and the ordinance is not unreasonable.

People v. Loyaltton, 147 Cal. 776; 82 Pac. 621.

11. (§ 11.) *Computation of time.*—The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

Scoville v. Anderson, 131 Cal. 594; 63 Pac. 1013.

12. (§ 12.) *Certain acts not to be done on holidays.*—Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

Baxter v. Vineland District, 136 Cal. 193; 68 Pac. 601.

13. (§ 13.) *Seal defined.*—When the seal of a court, public officer or person is required by law to be affixed to any paper, the word "seal" includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

14. (§ 14.) *Joint authority.*—Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

People v. Hecht, 105 Cal. 627; 38 Pac. 941.

15. (§ 15.) *Words and phrases.*—Words and phrases are construed according to the context and the approved usage of the

language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

State v. Cave, 20 Mont. 475; 52 Pac. 203. "Facility" is not a technical word, but one in common use, and its meaning is to be found in the sense attached to

it by approved usage; and moneys raised by a tax to furnish "additional school facilities" may be used to pay the salaries of teachers.

16. (§ 16.) *Certain terms used in this code defined.*—Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word "person" includes a corporation as well as a natural person; writing includes printing; "oath" includes affirmation or declaration; every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness. The following words, also, have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes both real and personal property.

2. The words "real property" are co-extensive with lands, tenements and hereditaments, and possessory titles to public lands.

3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt.

4. The word "year" as used in this code mean a calendar year, and the word "month" means a calendar month, unless otherwise expressed.

5. The word "will" includes codicils.

6. The word "writ" signifies an order or precept in writing, issued in the name of the state, or of a court or judicial officer; and the word "process," a writ or summons issued in the course of judicial proceedings.

7. The word "vessel," when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats and every structure adapted to be navigated from place to place.

8. The term "peace officer" signifies any of the officers mentioned in § 8924 (1375), of the penal code.

9. The term "magistrate" signifies any one of the officers mentioned in § 8923 (1374), of the penal code.

10. The word "state," when applied to the different parts of the United States, includes the District of Columbia and the territories; and the words "United States" may include the district and territories.

State v. District Court, 24 Mont. 333; 61 Pac. 883. In this section the legislature has classed an unpatented quartz-lode mining claim as real estate, and provided the same remedies for its protection as other real estate.

Hauswirth v. Mueller, 25 Mont. 161; 64 Pac. 326. The singular number when used in this code may include the plural, and the plural may include the singular; and a statute requiring the notice of a school election to contain "the time and place of holding the election" can designate different "places."

Wilson v. Harris, 21 Mont. 387; 54 Pac. 49. "Property," in its appropriate sense, denotes the interest one may have in land or chattels to the exclusion of others, although the word is frequently

employed to indicate the subject of the property, rather than the property itself.

Courtney v. Missoula Co., 21 Mont. 593; 55 Pac. 360. For the purposes of taxation, "property" includes "real estate," and within the definition of "real estate" is the possession of land.

Butte H. Co. v. Frank, 25 Mont. 348; 65 Pac. 2. An unpatented mining claim is real property of the owner.

Sweeney v. M. C. L. Co., 25 Mont. 561; 65 Pac. 918. An unpatented mining claim is real estate, property in every sense of the word, against all the world, while the owner of the claim is in possession, complying with the law, and performing the conditions precedent to the obtaining of his patent.

17. (§ 17.) *Statutes, laws, or rules inconsistent with code repealed.*—No statute, law, or rule, is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code all statutes, laws and rules, heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided, nor does it affect any private statute not expressly repealed.

Dowty v. Pittwood, 23 Mont. 116; 57 Pac. 727. This section did not repeal the whole of the Compiled Statutes, or of the statutes which were in force, but only such statutes as were inconsistent, or were not consistent, with the provisions of the new codes on the same subject,

except where the new codes expressly continued the old statutes in force. This section could have no effect before July 1, 1895.

People v. Clunie, 70 Cal. 505; 11 Pac. 775.

18. (§ 18.) *Certain statutes preserved.*—Nothing in either of the four codes affects any of the provisions of any special, local, or private statutes, but such statutes are recognized as continuing in force, notwithstanding the provisions of the codes, except so far as they have been repealed or affected by subsequent laws.

19. (§ 19.) *This act, how cited, etc.*—This act, whenever cited, enumerated, referred to, or amended, may be designated simply as the political code, adding, when necessary, the number of the section.

PART I.

THE SOVEREIGNTY OF THE STATE, AND THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

TITLE I. SOVEREIGNTY OF THE STATE.

II. PERSONS COMPOSING THE PEOPLE OF THE STATE.

III. POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO THE JURISDICTION OF THE STATE.

TITLE I.

SOVEREIGNTY OF THE STATE.

CHAPTER I. RESIDENCE OF SOVEREIGNTY.

II. TERRITORIAL JURISDICTION OF THE STATE.

III. GENERAL RIGHTS OF THE STATE OVER PERSONS.

IV. GENERAL RIGHTS OF THE STATE OVER PROPERTY.

CHAPTER I.

20. (§ 30.) *Residence of sovereignty.*—The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana," and all prosecutions must be conducted in the name of the state.

CHAPTER II.

TERRITORIAL JURISDICTION OF THE STATE.

Section 21. Territorial jurisdiction; limitations on.

" 22. *Military reservations, etc.*

" 23. *Purchase, etc., of lands by United States for public use.*

" 24. *Same.*

21. (§ 40.) *Territorial jurisdiction; limitations on.*—The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made.

State v. Tully, 31 Mont. 376; 78 Pac. 764. Under sections 40, 41, 42 and 43 of this code, the state consents to the purchase, condemnation or acquisition of lands by the United States. Where, however, the United States still retains its original ownership of the land, neither purchase, condemnation nor acquisition is necessary, but that actual occupation for any purpose indicated in these sec-

tions, stands in lieu thereof. Mere occupancy of government land by the military for any purpose, not indicated in the law or the constitution, would not of itself be sufficient to divest the state of sovereignty granted to it by Congress, nor does the right reserved to serve state process on these reservations infringe on the exclusive jurisdiction of the United States.

22. (§ 41.) *Military reservations, etc.*—Authority is granted to and acknowledged in the United States to exercise exclusive legislation as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana.

All legal process of the state, both civil and criminal, may be

served upon persons and property found within any of said reservations or on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

State v. Tully, 31 Mont. 375. 78 Pac. 763. The Constitution of Montana and this section acknowledge absolute sover-

eingnty in the United States over the places named or referred to.

23. (§ 42.) *Purchase, etc., of lands by United States for public use.*—The legislative assembly consents to the purchase or condemnation by the United States of any tract of land within this state for the purpose of erecting forts, magazines, arsenals, court houses, postoffices, and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime, may be served and executed thereon in the same mode and manner and by the same officers as if the purchase or condemnation had not been made.

State v. Tully, 31 Mont. 375; 78 Pac. 763. The Legislative Assembly has recognized absolute authority in the general government over all places subsequently acquired and used by the government for any of the purposes named in the Constitution of the United States, and con-

sented to the purchase or condemnation by the United States of any land within the state for erecting forts, magazines, arsenals, court houses, post offices and other needful buildings, and the only condition attached is that process of the state may be served in any of such places.

24. (§ 43.) *Same.*—That pursuant to article I, § 8, paragraph 17, of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the United States, for any of the purposes described in said paragraph of the constitution of the United States; said jurisdiction to continue as long as the said lands are held and occupied by the United States for public purposes; reserving, however, to this state, a concurrent jurisdiction for the execution upon said lands of all process, civil, or criminal, lawfully issued by the courts of the state, and not incompatible with the cession hereby made; *Provided*, that an accurate map or plat and description by metes and bounds of said land shall be filed in the office of the county clerk and recorder of the county in which the same are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city; *and provided further*, that the state reserves the right to tax all property of any railroad or other corporation having a right of way or location over or upon the said land. [Act approved March 9, 1893.]

State v. Tully, 31 Mont. 375; 78 Pac. 763. The state gives its consent to the purchase, and exclusive jurisdiction is ceded to the United States over any

lands within the limits of the state, which shall be acquired by the United States for purposes therein specified.

CHAPTER III.

GENERAL RIGHTS OF THE STATE OVER PERSONS.

25. (§ 50.) *Rights over persons enumerated.*—The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law :

1. To punish for crime.
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety.
3. To imprison or confine for the purpose of enforcing civil remedies.
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind.
5. To establish custody and restraint of paupers for the purpose of their maintenance.
6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation, and maintenance.
7. To require services of persons, with or without compensation, in military duty, in jury duty, as witnesses, as town, village or city officers, in highway labor, in maintaining the public peace, in enforcing the service of process, in protecting life and property from fire, pestilence, wreck and flood, and in such other cases as are provided by statute.

People v. Collins, 105 Cal. 508, subd. 1; 39 Pac. 16.

CHAPTER IV.

GENERAL RIGHTS OF THE STATE OVER PROPERTY.

Section 26. *Original and ultimate title.*

" 27. *Property escheats, when.*

" 28. *Acquisition by taxation and assessment.*

" 29. *By right of eminent domain.*

26. (§ 60.) *Original and ultimate title.*—The original and ultimate right of all property, real and personal, within the jurisdiction of this state and not belonging to the United States, is in the people of the state.

27. (§ 61.) *Property escheats, when.*—Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. All property within the limits of this state which does not belong to any person, belongs to the state.

28. (§ 62.) *Acquisition by taxation and assessment.*—The state or any county thereof, may acquire property by taxation in the modes authorized by law.

29. (§ 63.) *By right of eminent domain.*—The state may acquire or authorize others to acquire title to property, real or personal, for public use, in the cases and in the modes provided in title VII, part III, of the code of civil procedure.

TITLE II.

PERSONS COMPOSING THE PEOPLE OF THE STATE.

Section 30. Who are the people.

“ 31. *Who are citizens.*

“ 32. *Residence, rules for determining.*

30. (§ 70.) *Who are the people.*—The people, as a political body, consist:

1. Of electors.

2. Of citizens not electors.

31. (§ 71.) *Who are citizens.*—The citizens of the state are.

1. All persons born in this state and residing within it, except the children of transient aliens.

2. All persons born out of this state who are citizens of the United States and residing within this state.

Donovan v. Smith, 21 Mont. 344; 53 Pac. 1133. The architects for the State Capitol building were citizens of the United States, and before the contract for the plans were made, left the place where they then resided without any

intention of returning, and with the intention of removing to Montana. When the contract was made, they were residing in the state, and the court held they were citizens of Montana.

32. (§ 72.) *Residence, rules for determining.*—Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can only be one residence.

3. A residence cannot be lost until another is gained.

4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.

5. The residence of the husband is presumptively the residence of the wife.

6. The residence of an unmarried minor who has a parent living, cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent.

Huston v. Anderson, 145 Cal. 328, Subd. 3; 78 Pac. 626.

TITLE III.

POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO THE JURISDICTION OF THE STATE.

Section 33. Persons within the state entitled to its protection.

“ 34. *Allegiance.*

“ 35. *Allegiance may be renounced.*

Section 36. Persons not citizens.

“ 37. *Eligibility to office.*

“ 38. *Rights and duties of citizens not electors.*

“ 39. *Rights and duties of citizens of other states.*

33. (§ 80.) *Persons within the state entitled to its protection.*—Every person while within the jurisdiction of this state is entitled to its protection.

34. (§ 81.) *Allegiance.*—Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

35. (§ 82.) *Allegiance may be renounced.*—Allegiance may be renounced by a change of residence.

36. (§ 83.) *Persons not citizens.*—Persons in this state not its citizens are either:

1. Citizens of other states; or
2. Aliens.

37. (§ 84.) *Eligibility to office.*—Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

38. (§ 85.) *Rights and duties of citizens not electors.*—An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

39. (§ 86.) *Rights and duties of citizens of other states.*—A citizen of the United States, who is not a citizen of this state, has the same rights and duties as a citizen of this state not an elector.

PART II.

THE CHIEF POLITICAL DIVISIONS AND THE SEAT OF GOVERNMENT.

TITLE 1.

CHIEF POLITICAL DIVISIONS OF THE STATE.

CHAPTER I. COUNTIES.

II. SENATORIAL AND REPRESENTATIVE DISTRICTS.

III. CONGRESSIONAL DISTRICT.

IV. JUDICIAL DISTRICTS.

CHAPTER I.

40. (§ 100.) The state is divided into counties as declared in part IV. of this code.

CHAPTER II.

SENATORIAL AND REPRESENTATIVE DISTRICTS.

Section 41. Senatorial districts, how constituted.

“ 42. *New counties.*

“ 43. *Representative districts.*

Section 44. New counties.

“ 45. *Broadwater county.*

“ 46. *Same—Change in Jefferson and Meagher counties.*

41. (§ 110.) *Senatorial districts, how constituted.*—The senatorial districts of the state shall be constituted and numbered as follows:

The county of Beaverhead shall constitute the first district, and be entitled to one senator.

The county of Madison shall constitute the second district, and be entitled to one senator.

The county of Gallatin shall constitute the third district, and be entitled to one senator.

The county of Jefferson shall constitute the fourth district, and be entitled to one senator.

The county of Deer Lodge shall constitute the fifth district, and be entitled to one senator.

The county of Missoula shall constitute the sixth district, and be entitled to one senator.

The county of Lewis and Clark shall constitute the seventh district, and be entitled to one senator.

The county of Chouteau shall constitute the eighth district, and be entitled to one senator.

The county of Meagher shall constitute the ninth district, and be entitled to one senator.

The county of Silver Bow shall constitute the tenth district, and be entitled to one senator.

The county of Custer shall constitute the eleventh district, and be entitled to one senator.

The county of Yellowstone shall constitute the twelfth district, and be entitled to one senator.

The county of Dawson shall constitute the thirteenth district, and be entitled to one senator.

The county of Fergus shall constitute the fourteenth district, and be entitled to one senator.

The county of Park shall constitute the fifteenth district, and be entitled to one senator.

The county of Cascade shall constitute the sixteenth district, and be entitled to one senator.

42. (§ 111.) *New counties.*—Whenever new counties are created, each of said counties shall be entitled to one senator, but in no case shall a senatorial district consist of more than one county.

43. (§ 112.) *Representative districts.*—Representatives must be divided among the several counties of the state in the following manner:

The county of Beaverhead shall have two.

The county of Cascade shall have five.

- The county of Chouteau shall have two.
- The county of Custer shall have two.
- The county of Dawson shall have one.
- The county of Deer Lodge shall have six.
- The county of Fergus shall have two.
- The county of Flathead shall have three.
- The county of Gallatin shall have three.
- The county of Granite shall have two.
- The county of Jefferson shall have three.
- The county of Lewis and Clark shall have seven.
- The county of Madison shall have three.
- The county of Meagher shall have two.
- The county of Missoula shall have four.
- The county of Park shall have two.
- The county of Ravalli shall have two.
- The county of Silver Bow shall have twelve.
- The county of Teton shall have one.
- The county of Valley shall have one.
- The county of Yellowstone shall have one.
- The county of Carbon shall have one.
- The county of Sweetgrass shall have one. [*Act approved March 14, 1895.*]

44. (§ 113.) *New counties.*—Whenever new counties are created, each of said counties shall be entitled to one representative, until otherwise provided for by law. [*Act approved March 14, 1895.*]

45. *Broadwater County.*—That the County of Broadwater shall have two (2) representatives and one (1) Senator in future Legislative Assemblies of Montana, until an apportionment of Representatives shall be made in accordance with Article 6, Section 2 of the Constitution of Montana. [*Act approved March 5, 1897, § 1.*] (*5th Sess. 49-50.*)

46. *Same—Change in Jefferson and Meagher Counties.*—Provided that in order to conform to the representation as established by law, the representation of Meagher county is hereby reduced to one representative and one Senator, and the representation of Jefferson is hereby reduced to two Representatives and one Senator. [*Act approved March 5, 1897, § 2.*] (*5th Sess. 50.*)

CHAPTER III.

CONGRESSIONAL DISTRICTS.

47. (§ 120.) The state constitutes a congressional district.

CHAPTER IV.

JUDICIAL DISTRICTS.

48. (§ 130.) Until otherwise provided by law, the judicial districts of the state shall be constituted as follows: First dis-

trict, Lewis and Clark county; second district, Silver Bow county; third district, Deer Lodge county; fourth district, Missoula county; fifth district, Beaverhead, Jefferson, and Madison counties; sixth district, Park and Meagher counties; seventh district, Yellowstone, Custer and Dawson counties; eighth district, Cascade county; ninth district, Gallatin county; tenth district, Chouteau and Fergus counties.

For judicial districts as at present constituted, see Code of Civil Procedure, Sec. 6256, et seq.

PART III.

THE GOVERNMENT OF THE STATE.

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| TITLE | I. | PUBLIC OFFICERS. |
| | II. | ELECTIONS. |
| | III. | EDUCATION. |
| | IV. | MILITIA. |
| | V. | PUBLIC INSTITUTIONS. |
| | VI. | PUBLIC WAYS. |
| | VII. | GENERAL POLICE OF THE STATE. |
| | VIII. | THE PUBLIC LANDS OF THE STATE. |
| | IX. | MINES AND MINING. |
| | X. | IRRIGATION DISTRICTS. |
| | XI. | DRAIN DISTRICTS. |
| | XII. | REVENUE OF THE STATE. |

TITLE I.

PUBLIC OFFICERS.

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|---------|------|--|
| CHAPTER | I. | CLASSIFICATION OF PUBLIC OFFICERS. |
| | II. | LEGISLATIVE OFFICERS. |
| | III. | EXECUTIVE OFFICERS. |
| | IV. | JUDICIAL OFFICERS. |
| | V. | SALARIES OF JUDICIAL OFFICERS. |
| | VI. | MINISTERIAL AND OTHER OFFICERS CONNECTED
WITH THE COURTS. |
| | VII. | GENERAL PROVISIONS RELATIVE TO DIFFERENT
CLASSES OF OFFICERS. |

CHAPTER I.

CLASSIFICATION OF PUBLIC OFFICERS.

49. (§ 140.) The public officers of this state are classified as follows:

1. Legislative.
2. Executive.
3. Judicial.
4. Ministerial officers and officers of the courts.

But this classification is not to be construed as defining the legal powers of either class.

CHAPTER II.

LEGISLATIVE OFFICERS.

- ARTICLE I. DESIGNATION, TERM OF OFFICE, AND ELECTION OF MEMBERS.
- II. MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY.
- III. NUMBER, DESIGNATION, ELECTION AND APPOINTMENT OF OFFICERS AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.
- IV. POWER AND DUTIES OF OFFICERS AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.
- V. COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.
- VI. CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY.
- VII. CONTESTING ELECTIONS OF A STATE OFFICER.
- VIII. ATTENDANCE AND EXAMINATION OF WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY AND COMMITTEES THEREOF.
- IX. ENACTMENT OF STATUTES.
- X. INITIATIVE AND REFERENDUM.
- XI. PROMULGATION OF STATUTES.
- XII. OPERATION OF STATUTES.

ARTICLE I.

NUMBER, DESIGNATION, TERM OF OFFICE AND ELECTION OF MEMBERS OF THE LEGISLATIVE ASSEMBLY.

Section 50. Number and designation.

" 51. *Term of office.*

" 52. *Election of representatives.*

" 53. *Election of senators.*

" 54. *Same.*

50. (§ 150.) *Number and designation.*—The legislative assembly consists of

1. Sixteen senators.

2. Fifty-five representatives.

51. (§ 151.) *Term of office.*—The term of office of a senator is four years; of a representative, two years.

52. (§ 152.) *Election of representatives.*—At the general election in the year 1892, there must be elected fifty-five representatives in accordance with the apportionment prescribed in chapter II., title I., part II., of this code.

53. (§ 153.) *Election of senators.*—At the general election in the year 1892, there must be elected a senator from each of the

odd numbered senatorial districts and hold office for four years, and their successors must be elected in the year 1896, and every four years thereafter.

54. (§ 154.) *Same.*—At the general election in the year 1894 there must be elected a senator from each of the even numbered senatorial districts, who shall hold office for four years, and their successors must be elected in the year of 1898, and every four years thereafter.

ARTICLE II.

MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY.

Section 55. Time and place of meeting.

“ 56. *Certificate of election, evidence of a right to seat.*

“ 57. *Senate, organization of.*

“ 58. *House of representatives, organization of.*

“ 59. *Oath to be entered on journals.*

“ 60. *Election of officers.*

“ 61. *Compelling attendance of members.*

55. (§ 160.) *Time and place of meeting.*—The legislative assembly shall meet at the seat of government, at twelve o'clock, noon, on the first Monday of January, 1897, and each alternate year thereafter, and at other times when convened by the governor. [Act approved March 6, 1895.]

56. (§ 161.) *Certificate of election, evidence of a right to seat.*—The certificate of election from the clerk of the proper county is *prima facie* evidence of the right to membership of the person certified therein to be elected, for all purposes of organization of either branch of the legislative assembly.

57. (163.) *Senate, organization of.*—At the hour of twelve o'clock M on the day appointed for the meeting of any regular session of the Legislative Assembly, the President of the Senate, or in case of his absence or inability, then the senior member present must take the chair, call the Senators and Senators-elect to order, and then call over the Senatorial districts in their order, from which members have been elected at the preceding election, and as the same are called the members-elect must present their certificates, take the Constitutional oath of office, and assume their seats. The Senate may thereupon, if a quorum is present, proceed to elect its officers.” [Act approved Feb. 19, 1897.] (5th Sess. 103.)

58. (§ 164.) *House of representatives, organization of.*—At the time specified in § 57 (§ 163), the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then call over the roll of counties and districts; and as the same are called the members-elect must present their certificates, take the constitutional oath of office,

and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

59. (§ 165.) *Oath to be entered on journals.*—An entry of the oath taken by the members of the legislative assembly must be made on the journals of the proper houses respectively.

60. (§ 166.) *Election of officers.*—In all elections of officers of either branch of the legislative assembly, a majority of all the votes given is necessary to a choice.

61. (§ 167.) *Compelling attendance of members.*—Whenever at the commencement of or during the regular or extraordinary sessions of the legislative assembly, upon a call of either house it is found that no quorum of members is present, or if any member or members are found to be absent upon any such call, the members present are authorized to direct the sergeant-at-arms of such house, and in his absence, then any other person to compel the attendance of any or all the absentees. If the house refuse to excuse such absentee, he is not entitled to any per diem during such absence, and is liable for the expenses incurred in procuring his attendance.

ARTICLE III.

NUMBER, DESIGNATION, ELECTION, AND APPOINTMENT OF OFFICERS AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.

Section 62. Officers of the senate.

“ 63. *Officers of the house of representatives.*

“ 64. *How elected.*

“ 65. *Senate officers and employes.*

“ 66. *House officers and employes.*

62. (§ 180.) *Officers of the senate.*—The officers and employes of the senate consist of a president, president *pro tem.*, one secretary, one assistant secretary, one sergeant-at-arms, and the senate may elect one assistant sergeant-at-arms, one enrolling clerk, one engrossing clerk, one doorkeeper, one janitor, one day watchman, one night watchman, one chaplain, two pages, and three committee clerks.

63. (§ 181.) *Officers of the house of representatives.*—The officers and employes of the house of representatives consist of a speaker, speaker *pro tem.*, one clerk, one assistant clerk, and one sergeant-at-arms, and the house may elect one assistant sergeant-at-arms, one enrolling clerk, one engrossing clerk, one doorkeeper, one janitor, one day watchman, one night watchman, one chaplain, three pages, and four committee clerks.

64. (§ 182.) *How elected.*—All officers and employes of the legislative assembly, except the president of the senate, must be elected by the house to which such officers and employes are attached.

65. (§ 183.) *Senate officers and employes.*—The officers and

employes of the senate shall consist of a president, president *pro tem.*, secretary, assistant secretary, journal clerk and a sergeant-at-arms, and the senate may elect an assistant sergeant-at-arms, an enrolling clerk, an engrossing clerk, one doorkeeper, one janitor, one day watchman, one night watchman, one chaplain, and as many committee clerks and pages as the senate may from time to time require. [*Act approved Feby. 16, 1895.*]

66. (§ 184.) *House officers and employes.*—The officers and employes of the house of representatives shall consist of a speaker, speaker *pro tem.*, chief clerk, assistant chief clerk, journal clerk, and a sergeant-at-arms, and the house may elect an assistant sergeant-at-arms, an enrolling clerk, an engrossing clerk, one doorkeeper, one janitor, one day watchman, one night watchman, one chaplain, and as many committee clerks and pages as the house from time to time may require. [*Act approved Feby. 16, 1895.*]

ARTICLE IV.

POWERS AND DUTIES OF THE OFFICERS AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.

- Section 67. What officers of, may administer oaths.*
“ 68. *Duties of secretary and clerk.*
“ 69. *Duties of assistant secretary and assistant clerk.*
“ 70. *Journals, how authenticated.*
“ 71. *Duties of sergeant-at-arms.*
“ 72. *Duties of assistant sergeant-at-arms.*
“ 73. *Duties of subordinate officers.*
“ 74. *Duties of clerks.*
“ 75. *Duties of assistant clerks.*
“ 76. *Duties at close of session.*

67. (§ 200.) *What officers of, may administer oaths.*—The president and president *pro tem.* of the senate, and the speaker and speaker *pro tem.* of the house of representatives, may administer the oath of office to any senator or representative, and to the officers and employes of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination. The officers and employes must perform such duties as are required by the rules or orders of the respective bodies which elect them.

68. (§ 201.) *Duties of secretary and clerk.*—The secretary of the senate and the clerk of the house of representatives must attend each day, call the roll, prepare the journal, and read the journal and bills, and superintend all copying necessary to be done for their respective houses, and keep a correct record of the proceedings.

State v. Bloor, 20 Mont. 584; 52 Pac. 615. Bloor was the "secretary of the senate" and convicted of the crime of secreting a public record, a bill passed by the senate and house. It was contended that Bloor under this and the

following section did not have the custody of the bill by virtue of his office. These sections did not place the bill exclusively in the hands of the "assistant secretary of the senate", but the custody is also in the "secretary".

69. (§ 202.) *Duties of assistant secretary and assistant clerk.*—The assistant secretary of the senate and the assistant clerk of the house must take charge of all bills, petitions and other papers presented to their respective houses, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the secretary of the senate and clerk of the house of representatives.

70. (§ 203.) *Journals, how authenticated.*—The journal of the senate must be authenticated by the signature of the president, and the journal of the house of representatives by the signature of the speaker.

71. (§ 204.) *Duties of sergeant-at-arms.*—The sergeant-at-arms of the senate and the sergeant-at-arms of the house of representatives must give a general supervision, under the direction of their presiding officers, to the senate and house, with the rooms attached; attend during the sittings of their respective bodies, execute their commands and all process issued by their authority; keep an account for pay and mileage of members, and prepare checks for the same.

72. (§ 205.) *Duties of assistant sergeant-at-arms.*—The assistant sergeant-at-arms of each house must prohibit all persons, except members, officers and employes, and such other persons as may have the privilege of the floor assigned them by the rules of each house, from entering within the bar of the house, unless upon invitation, and keep order in the halls and lobbies, and perform such other duties as shall be imposed by the presiding officer or the sergeant-at-arms.

73. (§ 206.) *Duties of subordinate officers.*—The committee clerks, doorkeeper, janitor, day watchman, night watchman, and pages, must perform such duties as shall be assigned to them by the presiding officers of the respective houses, or by the rules and orders of the respective bodies.

74. (§ 207.) *Duties of clerks.*—The engrossing clerks and enrolling clerks must, within forty-eight hours after their reception, engross or enroll all bills delivered to them for engrossment or enrollment, unless further time be granted; and no extra assistance must be employed for them during the first thirty days of the session. Such assistance must be furnished during the last thirty days of the session only upon the vote of the house in which the work is to be performed.

75. (§ 208.) *Duties of assistant clerks.*—All work performed by assistants in the engrossing and enrolling clerks' offices must

be paid for out of the contingent fund of the respective houses in which the work is performed, as follows: For work performed in the engrossing clerks' offices, not to exceed the sum of ten cents per folio of one hundred words, and for work performed in the enrolling clerks' offices not to exceed the sum of fifteen cents per folio of one hundred words. All bills for engrossing or enrolling must be made out by the clerk and presented at the end of each week, to the committee on expenditures and accounts or such other committee as either house may designate, whose duty it is to audit and certify to the correctness of the same. Upon this certificate the state auditor must draw his warrant in favor of the clerk in whose charge work has been done, for the amount performed each week, and the clerk shall receive and pay the same to his assistants and becomes personally responsible to his assistants for their pay, and to their respective houses for all bills received by them.

76. (§ 209.) *Duties at close of session.*—The secretary of the senate and clerk of the house of representatives at the close of each session of the legislative assembly must mark, label and arrange all bills and papers belonging to the archives of their respective houses, and deliver them, together with all the books of both houses, to the secretary of state, who must certify to the reception of the same.

ARTICLE V.

COMPENSATION OF MEMBERS, OFFICERS, AND EMPLOYES OF THE LEGISLATIVE ASSEMBLY.

Section 77. Per diem and mileage of members.

“ 78. *Per diem and mileage of president of senate and speaker of house.*

“ 79. *Compensation of other officers and employees.*

“ 80. *Same.*

“ 81. *Compensation for services after close of session.*

77. (§ 220.) *Per diem and mileage of members.*—Members of the legislative assembly receive six dollars per day, payable weekly during the session of the legislative assembly, and twenty cents per mile for each mile of travel to and from their residences and the place of holding the session.

Wade v. Lewis & Clark Co., 24 Mont. 338; 61 Pac. 880. Howes v. Abbott, 78 Cal. 272; 20 Pac. 572.

78. (§ 221.) *Per diem and mileage of president of senate and speaker of house.*—The president of the senate and the speaker of the house receive the sum of ten dollars per diem during the session of the legislative assembly, and the same mileage as members.

Wade v. Lewis & Clark Co., 24 Mont. 338; 61 Pac. 880.

79. (§ 222.) *Compensation of other officers and employees.*—

There must be paid to the secretary of the senate and to the clerk of the house of representatives, each ten dollars per day; to the assistant secretary, the engrossing clerk, the enrolling clerk, the sergeant-at-arms, and the assistant sergeant-at-arms, of the senate, each six dollars per day; to the assistant clerk, the engrossing clerk, the enrolling clerk, the sergeant-at-arms, the assistant sergeant-at-arms, of the house of representatives, each six dollars per day; to each committee clerk, doorkeeper, janitor, day watchman and night watchman, of each house, five dollars per day; the chaplain and each page of each house four dollars per day.

Robinson v. Dunn, 77 Cal. 475; 19 Pac. 878.

80. (§ 224.) *Same.*—The secretary of the senate and the chief clerk of the house of representatives, shall be paid each ten dollars per day; the assistant secretary of the senate and the assistant chief clerk of the house, and the journal clerk of the senate and the journal clerk of the house shall be paid each eight dollars per day; the sergeant-at-arms of the senate and the sergeant-at-arms of the house shall be paid each six dollars per day; the assistant sergeant-at-arms of the senate and the assistant sergeant-at-arms of the house shall be paid each five dollars per day; the engrossing and enrolling clerk of the senate, and the engrossing clerk and enrolling clerk of the house shall be paid each six dollars per day; the doorkeeper, janitor, day watchman and night watchman of the senate, and the doorkeeper, janitor, day watchman and night watchman of the house shall be paid each five dollars per day; the chaplain and pages of the senate, and the chaplain and pages of the house, shall be paid each four dollars per day; the committee clerks of the senate and the committee clerks of the house shall be paid each five dollars per day. [*Act approved Feby. 16, 1895.*]

81. (§ 223.) *Compensation for services after close of session.*—For services performed under the provisions of § 76 (209), of this code, each of the officers therein named receive a compensation of fifty dollars.

ARTICLE VI.

CONTESTING ELECTIONS FOR MEMBERS OF THE LEGISLATIVE ASSEMBLY.

Section 82. Who may contest.

“ 83. *Statement of cause of contest to be filed.*

“ 84. *Commission to take testimony.*

“ 85. *Notice to person interested. By whom served.*

“ 86. *Compelling attendance of witnesses.*

“ 87. *Testimony, how taken.*

“ 88. *Vacancy in commission, how filled.*

“ 89. *Fees of officers.*

Section 90. Testimony to be transmitted to secretary of state.

“ 91. *Depositions.*

“ 92. *Further evidence may be taken.*

82. (§ 230.) *Who may contest.*—The right of any person declared elected to a seat in the senate or house of representatives may be contested by any qualified elector of the county or district to be represented by such senator or representative.

83. (§ 231.) *Statement of cause of contest to be filed.*—The person contesting such election must, within twenty days after the certificate of election is issued, file with the clerk of the district court of the county, or one of the counties in which the alleged cause of contest originated, a statement of the grounds of contest verified by his oath.

84. (§ 232.) *Commission to take testimony.*—On the filing of such a statement the clerk must issue a commission, directed to two justices of the peace of his county, to meet at a time and place specified in the commission, not less than twenty nor more than thirty days from the date thereof, for the purpose of taking the depositions of such witnesses as the parties to the contest may wish to examine.

85. (§ 233.) *Notice to person interested. By whom served.*—Written notice of such contest, specifying the time and place of taking depositions, and a copy of the statement certified by the clerk, must be delivered to the person whose election is contested, or if he cannot be found, left at the house where he last resided, by the sheriff of the county in which such person claims his residence, within ten days after such statement is filed.

86. (§ 234.) *Compelling attendance of witnesses.*—Either of the justices of the peace has power to issue subpoenas for witnesses, at the request of either party, to be served by the sheriff as other subpoenas; and such justices, when met at the time and place appointed to take such depositions, have the same power to issue attachments and assess fines against witnesses, as is given to justices of the peace in the trials of civil actions.

87. (§ 235.) *Testimony, how taken.*—The justices must meet at the time and place appointed, and take the depositions of witnesses produced by the parties, and may continue the examination from day to day if necessary. When the examination is closed they must seal up the depositions taken before them, together with the commission, and transmit the same by mail or express to the clerk with whom the statement was filed.

88. (§ 236.) *Vacancy in commission, how filled.*—If at any time either of the justices is unable to proceed in such examination, the clerk may supply the vacancy by designating any justice of the peace of the county.

89. (§ 237.) *Fees of officers.*—Officers performing services in a contested election case may charge and collect from the party

at whose instance such services were performed, the same fees as are allowed them for similar services in civil cases.

90. (§ 238.) *Testimony to be transmitted to secretary of state.*—The clerk must seal up the depositions, the original statement, the copy of the notice served upon the party whose right is contested, and the commission issued to the justices of the peace, and transmit the same by mail to the secretary of state, indorsing thereon the names of the contesting parties and the branch of legislative assembly before which such contest is to be tried. The secretary of state must deliver the same unopened to the presiding officer of the house in which such contest is to be tried, on or before the second day of the session of the legislative assembly next after taking such depositions, and such presiding officer must immediately give notice to the house that such papers are in his possession.

91. (§ 239.) *Depositions.*—At any time after notice of contest has been given, and before the trial thereof before the proper branch of the legislative assembly, either party may take depositions to be read on the trial in like manner and under the same rules as are allowed and required in the cases of depositions to be read on the trial of civil actions; and such depositions when taken must be sealed up by the officer taking the same, and directed to the secretary of state, who must keep the same unopened, and deliver them to the presiding officer of the house in which the contest is to be tried.

92. (§ 240.) *Further evidence may be taken.*—The house before which the contest is pending may take such other evidence in the case as it deems material.

ARTICLE VII.

CONTESTING THE ELECTION OF A STATE OFFICER.

Section 93. Who may contest.

“ 94. *Contest, how conducted.*

93. (§ 250.) *Who may contest.*—Any elector of the state may contest the election of any person declared elected to a state office or to the office of district judge.

94. (§ 251.) *Contest, how conducted.*—The proceedings in such contest must be according to the provisions of chapter V., part II., title X., of the Code of Civil Procedure, or by writ of *quo warranto* issued by the supreme court.

ARTICLE VIII.

ATTENDANCE AND EXAMINATION OF WITNESSES BEFORE THE LEGISLATIVE ASSEMBLY AND COMMITTEES THEREOF.

Section 95. Subpoenas.

“ 96. *Service of subpoenas.*

“ 97. *Contempt.*

Section 98. Compelling attendance.

“ 99. *Witnesses will not be held to answer criminally.
Refusal to testify.*

95. (§ 260.) *Subpoenas.*—A subpoena requiring the attendance of any witness before either house of the legislative assembly, or a committee thereof, may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the house of representatives, or the senate, or a committee.

2. It is addressed to the witness.

3. It requires the attendance of such witness at a time and place certain.

4. It is signed by the president of the senate, speaker of the house, or chairman of a committee.

96. (§ 261.) *Service of subpoenas.*—The subpoena may be served by any elector of the state, and his affidavit that he delivered a copy to the witness is evidence of service.

97. (§ 262.) *Contempt.*—If any witness neglects or refuses to obey such subpoena, or appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

98. (§ 263.) *Compelling attendance.*—Any witness neglecting or refusing to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the senate or house, signed by the president or speaker of the house of representatives, and countersigned by the secretary or clerk.

99. (§ 264.) *Witnesses will not be held to answer criminally. Refusal to testify.*—No person sworn and examined before either house of the legislative assembly or any committee thereof, can be held to answer criminally, or be subject to any penalty or forfeiture for any fact or act touching which he is required to testify, nor is any statement made or paper produced by any such witness competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper touching which he is examined, for the reason that his testimony or the production of such paper tend to disgrace him or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

ARTICLE IX.

ENACTMENT OF STATUTES.

Section 100. Bills received by the governor, how indorsed.

Section 101. Approval of bills.

“ 102. *Bills returned without approval.*

“ 103. *Return, when house not in session.*

“ 104. *Bills remaining with the governor more than five days.*

“ 105. *Effect of final adjournment on bills.*

100. (§ 270.) *Bills received by the governor, how indorsed.*—Every bill must, as soon as delivered to the governor, be indorsed as follows: “This bill was received by the governor this ——— day of ——— eighteen ———.” The indorsement must be signed by the private secretary of the governor, or by the governor himself.

101. (§ 271.) *Approval of bills.*—When the governor approves a bill he must set his name thereto, with the date of his approval, and deposit the same in the office of the secretary of state. If any bill presented to the governor contains several distinct items of appropriation of money he may disapprove one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects and his objections thereto. If the legislative assembly be in session, the governor must transmit to the house in which the bill originated a copy of such statement, and the items so objected to must be separately reconsidered in the same manner as bills which have been disapproved by the governor.

102. (§ 272.) *Bills returned without approval.*—When a bill has passed both houses of the legislative assembly, and is returned by the governor without his signature, and with objections thereto, or if it be a bill containing several items of appropriation of money, with objections to one or more items, and upon reconsideration such bill, or item, or items, pass both houses by the constitutional majority, the bill or item, or items, must be authenticated as having become a law by a certificate indorsed on or attached to the bill, or indorsed or attached to the copy of the statement of objections, in the following form: “This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses by the constitutional majority, has become a law this ——— day of ——— A. D., ———;” or, “the following items in the within statement (naming them) having after reconsideration, passed both houses by the constitutional majority, have become a law this ——— day of ——— A. D., ———.” which indorsement, signed by the president of the senate and the speaker of the house of representatives is a sufficient authentication thereof. Such bill or statement must then be delivered to the governor, and by him must be deposited with the laws in the office of the secretary of state.

103. (§ 273.) *Return, when house not in session.*—If, on the

day the governor desires to return a bill without his approval, and with his objections thereto, to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message, to the presiding officer, secretary, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message, notifies it of such delivery, and of the time when, and the person to whom, such delivery was made.

104. (§ 274.) *Bills remaining with the governor more than five days.*—Every bill which has passed both houses of the legislative assembly, and has not been returned by the governor within five days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state, in the following form: "This bill having remained with the governor five days (Sundays excepted), and the legislative assembly being in session it has become a law this —— day of —— A. D. ——," which certificate must be signed by the secretary of state and deposited with the laws in his office.

105. (§ 275.) *Effect of final adjournment on bills.*—No bill shall become a law after the final adjournment of the legislative assembly unless approved by the governor within fifteen days after such adjournment. In case the governor fails to approve of any bill after the final adjournment of the legislative assembly, it must be filed with his objections in the office of the secretary of state.

ARTICLE X.

INITIATIVE AND REFERENDUM.

Section 106. *Form of petition for referendum.*

" 107. *Form of petition for initiative.*

" 108. *Clerk to verify signatures to petitions.*

" 109. *Notice to governor and proclamation.*

" 110. *Secretary of state to certify measures to be voted on. Printing ballots.*

" 111. *Manner of voting.*

" 112. *Printing and distribution of measures to be voted on.*

" 113. *Cavvass of votes.*

" 114. *Who may petition. False signatures. Penalties.*

" 115. *Referred bills not effective until approved.*

106. *Form of petition for referendum.*—The following shall be substantially the form of petition for the referendum to the people on any act passed by the Legislative Assembly of the State of Montana.

WARNING.

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one Election, or who is not, at the time of signing the same, a legal voter of this State, is punishable by a fine not exceeding Five Hundred Dollars (\$500.00) or imprisonment in the penitentiary not exceeding two years or by both such fine and imprisonment; .

PETITION FOR REFERENDUM.

To the Honorable, Secretary of State for the State of Montana:

We, the undersigned citizens and legal voters of the State of Montana, respectfully order that Senate (House) Bill Number entitled (title of Act), passed by the Legislative Assembly of the State of Montana, at the regular (special) session of said Legislative Assembly, shall be referred to the people of the State for their approval or rejection, at the regular, general or special election to be held on the day of, 19.., and each for himself says: I have personally signed this petition; I am a legal voter of the State of Montana; and my residence, postoffice address and voting precinct are correctly written after my name.

Name Residence
Postoffice address
If in city, street and number
Voting Precinct

(Here follow numbered lines for signatures.)

[*Act approved March 2, 1897, § 1.*] (*10th Sess. Chap. 62.*)

107. *Form for petition for initiative.*—The following shall be substantially the form of petition for any law of the State of Montana proposed by the initiative:

WARNING !

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one Election, or who is not, at the time of signing the same, a legal voter of this State, is punishable by a fine not exceeding Five Hundred Dollars (\$500.00) or imprisonment in the penitentiary not exceeding two years or by both such fine and imprisonment.

Petition for Initiative.

To the Honorable Secretary of State of the State of Montana:

We, the undersigned legal voters of the State of Montana, respectfully demand that the following proposed law shall be submitted to the legal electors of the State of Montana, for their approval or rejection, at the regular general or special election to be

held on the day of, 190..., and each for himself says:

I have personally signed this petition, and my residence, post-office address, and voting precinct are correctly written after my name.

Name Residence.....
Postoffice address.....
If in city, street and number.....
Voting Precinct.....

(Numbered lines for names on each sheet.)

Every such sheet for petitioners signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but such petition may be filed with the Secretary of State in numbered sections, for convenience in handling, and referendum petitions may be filed in Sections in like manner. [Act approved March 2, 1907, § 2.] (10th Sess., Chap. 62.)

108. Clerk to verify signatures to petitions.—The County Clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of said petition containing such signatures, his certificate to the Secretary of State, substantially as follows:

State of Montana, }
County of..... } ss.

To the Honorable, Secretary of State for Montana:

I,, County Clerk of the County of hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers) numbering (number of genuine signatures) are genuine. As to the remainder of the signatures thereon, I believe that they are not genuine, for the reason that.....and I further certify that the following names (.....) do not appear on the registration books and blanks in my office.

Signed:.....
.....County Clerk.
(Seal of Office).....By.....
.....Deputy.....

Every such certificate shall be prima facie evidence of the facts stated therein, and of the qualifications of the electors whose signatures are thus certified to be genuine, and the Secretary of State shall consider and count only such signatures on such peti-

tions as shall be so certified by said county clerks to be genuine: Provided, that the Secretary of State may consider and count such of the remaining signatures as may be proved to be genuine, and that the parties so signing were legally qualified to sign such petitions, and the official certificate of a Notary Public of the County in which the signer resides shall be required as to the fact for each of such last named signatures; and the Secretary of State shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificates shall be substantially in the following form:

State of Montana,)
County of.....) ss.

I, a duly qualified and acting Notary Public in and for the above named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are legal voters of the State of Montana, and of the county and precincts written after their several names in the annexed petition, and that their residence and postoffice address is correctly stated therein, to-wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and Official Seal this.....day of....., 190...
Notary Public, in and for.....
..... County, State of Montana.

The County Clerk shall not retain in his possession any such petition, or any part thereof, for a longer period than two days for the first two hundred signatures thereon, and one additional day for each two hundred additional signatures, or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall forward the same to the Secretary of State, with his certificate attached thereto, as above provided. The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors. [Act approved March 2, 1907, § 3.] (10th Sess. Chap. 62.)

109. *Notice to Governor and proclamation.*—Immediately upon the filing of any such petition for the referendum or the initiative with the Secretary of State, signed by the number of voters and filed within the time required by the Constitution, he shall notify the Governor in writing of the filing of such petition, and the Governor shall forthwith issue his proclamation, announcing that such petition has been filed, with a brief statement of its tenor and effect. Said proclamation shall be published four times for four consecutive weeks in one daily or weekly

paper in each county of the State of Montana. [Act approved March 2, 1907, § 4.] (10th Sess. Chap. 62.)

110. *Secretary of State to certify measures to be voted on—Printing ballots.*—The Secretary of State, at the same time that he furnishes to the County Clerks of the several counties certified copies of the names of the candidates for state and county offices, shall furnish to said county clerks his certified copy of the titles and numbers of the various measures to be voted upon at the ensuing general or special election, and he shall use for each measure, a title designated for that purpose by the Legislative Assembly, Committee, or organization presenting and filing with him the act, or petition for the initiative or the referendum or in the petition or Act; provided, that such title shall in no case exceed 100 words, and shall not resemble any such title previously filed for any measure to be submitted at that election, which shall be descriptive of said measure, and he shall number such measures; and such title shall be printed on a separate official ballot in the order in which the Acts referred by the Legislative Assembly and petitions by the people shall be filed in his office. The affirmative of the first measure shall be numbered 300 and the negative 301, in numerals, and the succeeding measures shall be numbered consecutively 302, 303, 304, 305, and so on at each election. It shall be the duty of the several county clerks to print said titles and numbers upon a separate official ballot, in the order presented to them by the Secretary of State, and the relative position required by law. Measures proposed by the initiative shall be designated and distinguished from measures proposed by the Legislative Assembly by the heading "Proposed Petition for Initiative." [Act approved March 2, 1907, § 5.] (10th Sess. Chap. 62.)

111. *Manner of voting.*—The manner of voting measures submitted to the people shall be: By marking his ballot with a cross on diagram opposite and to the left of the proposition for which he desires to vote.

- | | |
|--------------------------|------------------------------------|
| <input type="checkbox"/> | For the Initiative Measure No..... |
| <input type="checkbox"/> | Against Initiative Measure No..... |
| <input type="checkbox"/> | For Referendum Measure No..... |
| <input type="checkbox"/> | Against Referendum Measure No..... |

[Act approved March 2, 1907, § 6.] (10th Sess. Chap. 62.)

112. *Printing and distribution of measures to be voted on.*—The Secretary of State shall, not later than the first Monday of the third month next before any general or special election, at

which any proposed law is to be submitted to the people, cause to be printed a true copy of the title and text of each measure to be submitted, with the number and form in which the question will be printed on a separate official ballot. The paper to be used for the covers of such pamphlets shall be twenty by twenty-five inches, and fifty pounds weight to the ream. The persons, committees, or duly authorized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to place with the Secretary of State for distribution, any pamphlets advocating such measure, not later than the first Monday of the fifth month before the regular general or special election at which the measure is to be voted on; any person, committee or organization opposing any measure may place with the Secretary of State for distribution any pamphlets they may desire, not later than the first Monday of the fourth month immediately preceding such election; as to pamphlets advocating or opposing any measure referred to the people by the Legislative Assembly, they shall be governed by the same rules of time, but they may be placed with the Secretary of State by any person, committee, or organization: Provided, that all such pamphlets shall be furnished to the Secretary of State in sheets of uniform size, as follows: Size of pamphlet page to be six inches wide by nine inches long; size of type page to be twenty-six ems pica wide, by forty ems pica long, set in long primer of ten-point type, and printed on sized and supercalendered paper, twenty-five by thirty-eight inches, weighing fifty pounds to the ream. All such pamphlets shall be furnished to the Secretary of State at the sole expense of the persons interested, and without cost to the State. In no case shall the Secretary of State be obliged to receive any such pamphlets unless a sufficient number is furnished to supply one to every legal voter in the State, but in such case, he shall forthwith notify the persons offering the same of the number required. The Secretary of State shall cause one copy of each of said pamphlets to be bound in with his copy of the measures to be submitted as herein provided. The title page of every such pamphlet shall show the official numbers for and against, and the ballot title of the measure to which it refers, and whether it is intended to favor or oppose such measure and by whom it is issued. The Secretary of State shall distribute to each County Clerk, before the second Monday in the third month next preceding such regular general election, a sufficient number of said bound pamphlets to furnish one copy to every voter in his county. And each county clerk shall be required to mail to each registered voter in each of the several counties in the State at least one copy of the same, within thirty days from the date of his receipt of the same from the Secretary of State. The mailing of said bound pamphlets shall be a part of the official duty of the County Clerk

of each of the several counties and his official compensation shall be full compensation for this additional service. The Secretary of State shall not be obliged to receive or distribute any pamphlets advocating or opposing any measure unless the same shall be filed with him within the time herein provided. [*Act approved March 2, 1907, § 7.*] (10th Sess. Chap. 62.)

113. *Canvass of votes.*—The votes on measures and questions shall be counted, canvassed, and returned by the regular boards of judges, clerks and officers as votes for candidates are counted, canvassed, and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the Secretary of State on separate abstract sheets in the manner provided by Sections 598 (1440) and 599 (1441), of the Political Code for abstracts of votes for State officers. It shall be the duty of the State Board of Canvassers to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for each measure and the Governor shall forthwith issue his proclamation, which shall be published in two daily newspapers printed at the capital, giving the whole number of votes cast in the State for and against each measure and question, and declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the State of Montana from the date of said proclamation designating such measures by their titles. [*Act approved March 2, 1907, § 8.*] (10th Sess. Chap. 62.)

114. *Who may petition—False signature—Penalties.*—Every person who is a qualified elector of the State of Montana may sign a petition for the referendum or for the Initiative. Any person signing any name other than his own to such petition or signing the same more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or any person wilfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment in the discretion of the court before which such conviction shall be had. [*Act approved March 2, 1907, § 9.*] (10th Sess. Chap. 62.)

115. *Referred bills not effective until approved.*—A Bill passed by the Legislative Assembly and referred to popular vote at the next general election, or at a special election, shall not be in effect until it is approved at such general or special election by a majority of those voting for and against it. [*Act approved March 2, 1907, § 10.*] (10th Sess. Chap. 62.)

ARTICLE XI.

PROMULGATION OF STATUTES.

116. (§ 280.) *Publication and distribution of statutes.*—The publication and distribution of statutes is provided for in chapter III., title I., part III., of this code.

ARTICLE XII.

OPERATION OF STATUTES.

Section 117. When statutes take effect.

“ 118. *When joint resolutions take effect.*

“ 119. *Effect of amendment.*

“ 120. *Construction of statutes.*

“ 121. *Repeal of statutes.*

“ 122. *Act not revived by repealing the act repealing it.*

“ 123. *Repeal of law creating offense no bar to punishment.*

“ 124. *Amendatory act, when void.*

117. (§ 290.) *When statutes take effect.*—Every statute, unless a different time is prescribed therein, takes effect on twentieth day after its passage.

118. (§ 291.) *When joint resolutions take effect.*—Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

119. (§ 292.) *Effect of amendment.*—Where a section or a part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

Dowty v. Pittwood, 23 Mont. 116; 57 Pac. 727.

Banks v. Tolo Co., 104 Cal. 259; 37 Pac. 900.

120. (§ 293.) *Construction of statutes.*—The general rules for the construction of statutes are contained in the provisions of the different codes.

121. (§ 294.) *Repeal of statutes.*—Any statute may be repealed at any time, except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

122. (§ 295.) *Act not revived by repealing the act repealing it.*—No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

123. (§ 296.) *Repeal of law creating offense no bar to punishment.*—The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law

so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

124. (§ 297.) *Amendatory act, when void.*—An act amending a section of an act repealed is void.

Fletcher v. Prather, 102 Cal. 420; 36 Pac. 658.

CHAPTER III.

EXECUTIVE OFFICERS.

ARTICLE I. CLASSIFICATION, NUMBER AND DESIGNATION OF EXECUTIVE OFFICERS.

II. MODE OF ELECTION OR APPOINTMENT, AND TERM OF CIVIL EXECUTIVE OFFICERS.

III. GOVERNOR.

IV. LIEUTENANT GOVERNOR.

V. SECRETARY OF STATE.

VI. AUDITOR.

VII. TREASURER.

VIII. ATTORNEY GENERAL.

IX. STATE LAND AGENT.

X. SUPERINTENDENT OF PUBLIC INSTRUCTION.

XI. STATE EXAMINER.

XII. STOCK COMMISSIONERS AND VETERINARY SURGEON.

XIII. SEALER OF WEIGHTS AND MEASURES.

XIV. BOARD OF EXAMINERS.

XV. BOARD OF CAPITOL COMMISSIONERS.

XVI. STATE BOARD OF CHARITIES AND REFORM.

XVII. BUREAU OF AGRICULTURE, LABOR AND INDUSTRY.

XVIII. OTHER EXECUTIVE OFFICERS.

ARTICLE I.

CLASSIFICATION, NUMBER, AND DESIGNATION OF EXECUTIVE OFFICERS.

Section 125. Classification of executive officers.

“ 126. *Military officers.*

“ 127. *Designation and number of civil executive officers.*

125. (§ 330.) *Classification of executive officers.*—Executive officers are either:

1. Civil; or,

2. Military.

126. (§ 331.) *Military officers.*—Military officers are designated and their duties prescribed in title IV., of part III., of this code.

127. (§ 332.) *Designation and number of civil executive officers.*—The number and designation of the civil executive officers are as follows: A governor; a private secretary for the

governor; lieutenant-governor; a secretary of state; a state auditor; a state treasurer; an attorney general; a state land agent; a mineral land commissioner; a superintendent of public instruction; a state examiner; a state sealer of weights and measures; three members of the board of pardons; three members of the board of state prison commissioners; a warden of the state prison; three members of the state board of examiners; four members of the state board of land commissioners; eleven members of the state board of education; five members of the state board of equalization; a state veterinary surgeon; an inspector of boilers; one assistant inspector of boilers; an inspector of mines; a deputy inspector of mines; seven members of the board of medical examiners; a state librarian; such other officers as fill offices created by law for the government of counties, cities, and towns, or for the health, school, election, road, or revenue laws.

ARTICLE II.

MODE OF ELECTION OR APPOINTMENT AND TERM OF OFFICE OF CIVIL EXECUTIVE OFFICERS.

- Section 128. Certain officers elected.*
- " 129. *State land agent.*
 - " 130. *State sealer of weights and measures.*
 - " 131. *State board of equalization.*
 - " 132. *State Board of education.*
 - " 133. *Officers of libraries.*
 - " 134. *Board of examiners.*
 - " 135. *State Prison commissioners.*
 - " 136. *Board of pardons.*
 - " 137. *Board of land commissioners.*
 - " 138. *Officers appointed.*
 - " 139. *Governor's private secretary.*
 - " 140. *Same.*
 - " 141. *Duties of secretary.*
 - " 142. *Deputies—Salaries.*
 - " 143. *Deputies.*
 - " 144. *Consolidated clerkships.*

128. (§ 340.) *Certain officers elected.*—The mode of election of the governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction, is prescribed by the constitution.

129. (§ 341.) *State land agent.*—The state land agent is appointed by the governor, with the consent of the state board of land commissioners, and holds his office during the pleasure of the board.

130. (§ 342.) *State sealer of weights and measures.*—The secretary of state is ex-officio state sealer of weights and measures.

Note.—Coal mine inspector ex-officio sealer of weights and measures. See acts 1907, Chap. 133.

131. (§ 343.) *State board of equalization.*—The governor, secretary of state, state treasurer, state auditor, and attorney general, constitute a state board of equalization.

132. (§ 344.) *State board of education.*—The state board of education consists of eleven members, and is constituted as provided in §§ 642 (1510) and 643 (1511), of this code.

133. (§ 345.) *Officers of libraries.*—The trustees of the state library and the state librarian are constituted and appointed as prescribed in chapter III., title V., of part III., of this code.

134. (§ 346.) *Board of examiners.*—The governor, secretary of state and attorney general constitute a board of examiners.

135. (§ 347.) *State prison commissioners.*—The governor, secretary of state and attorney general constitute a board of state prison commissioners.

136. (§ 348.) *Board of pardons.*—The secretary of state, attorney general and state auditor constitute the board of pardons.

137. (§ 349.) *Board of land commissioners.*—The governor, superintendent of public instruction, secretary of state and attorney general constitute the state board of land commissioners.

138. (§ 350.) *Officers appointed.*—The following executive officers are appointed by the governor, with the consent of the senate:

1. A state veterinary surgeon; an inspector of boilers; an assistant inspector of boilers; an inspector of mines; a deputy inspector of mines; a state examiner; who shall hold their offices for four years and until their successors are appointed and qualified, unless sooner removed according to law.

2. Members of the board of medical examiners, who shall hold their offices for the term of six years, except as otherwise provided by law. [Act approved March 15, 1895.]

139. (§ 351.) *Governor's private secretary.*—The private secretary of the governor is appointed by him, and holds office at the governor's pleasure.

140. (§ 352.) *Same.*—That the governor of Montana is hereby authorized to appoint a private secretary who shall hold his office at the pleasure of the governor, and who shall receive an annual salary of twenty-four hundred dollars per annum, payable monthly. [Act approved March 1, 1893.]

141. (§ 353.) *Duties of secretary.*—The secretary shall perform such duties as may be required of him by the governor and the laws of the state. [Acts approved March 1, 1893.]

142. (§ 354.) *Deputies—Salaries.*—That the State Treasurer, State Auditor and Secretary of State shall each appoint a deputy who, in the absence of his principal, or in case

of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take and file the oath of office provided by law for other State officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all the official acts of his deputy and may revoke such appointment at his pleasure, and may require the deputy to give him a bond in such sum as the principal may determine; which bond shall be made, executed approved and filed as other State official bonds. Each of said deputies shall receive an annual salary, Deputy State Treasurer, eighteen hundred dollars. Deputy State Auditor, eighteen hundred dollars. Deputy Secretary of State, eighteen hundred dollars. Deputy Attorney General, eighteen hundred dollars, payable in the same manner and at the same time as are the salaries of other State officers. [*Acts approved March 7th, 1899, § 1.*] (6th Sess. 86.)

143. (§ 355.) *Deputies.*—That the Secretary of State, State Treasurer, State Auditor, and the State Superintendent of Public Instruction, shall each appoint a deputy who in the absence of the principal, or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled. Such deputy shall subscribe, take and file the oath of office provided by law for other State Officers before entering upon the performance of his duties. The principal shall be responsible under his Official Bond for all the Official Acts of his deputy and may revoke his appointment at his pleasure and may require the deputy to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other State Bonds, provided, nothing herein contained shall be construed to authorize an increase of the number of employees in any office. [*Act approved March 5th, 1903, § 1.*] (8th Sess. Chap. 86.)

144. (§ 356.) *Consolidated Clerkships.*—That the several clerkships of the Board of Pardons, Board of Commissioners for the Insane, Board of State Prison Commissioners, the State Board of Equalization are hereby consolidated; that there shall be one clerk, to be appointed by the Governor, who shall perform all the duties of clerk pertaining to the several boards herein mentioned; and the said clerk shall receive a salary of eighteen hundred dollars per annum, payable monthly, out of the state treasury; provided that the State Board of Equalization may, in their discretion, employ additional clerical assistance, if, in their judgment, same shall at any time be required to properly transact the business of that Board during the months when the Board is engaged in equalizing assessments. [*Act approved March 9, 1903, § 1.*] (8th Sess. Chap. 126.)

ARTICLE III.

THE GOVERNOR.

Section 145. Powers and duties of governor.

“ 146. *To transmit list of appointments to legislative assembly.*

“ 147. *Records in office of.*

“ 148. *Persons acting as Governor.*

“ 149. *Salary of Governor.*

145. (§ 370.) *Powers and duties of governor.*—In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled and the duties thereof performed, or, in default thereof, apply such remedy as the law allows, and if the remedy is imperfect, acquaint the legislative assembly therewith at its next session.

3. He is to make the appointments and supply the vacancies as required by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient.

6. He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any county attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or any person who has committed or is charged with an offense punishable by death.

9. He must perform such duties respecting fugitives from justice as are prescribed by chapter IV., of title XII., part II., §§ 9697 (2850) to 9710 (2863), of the penal code.

10. He must issue and transmit election proclamations, as prescribed in title II., of part III., of this code.

11. He must issue land warrants and patents, as prescribed in title VIII., of part III., of this code.

12. He must, on or before the second Monday of November, in the year eighteen hundred and ninety-two, and in each second

year thereafter, deliver to the secretary of state for publication all biennial reports of officers and boards for the two preceding years.

13. He may require any officer or board to make special reports to him, upon demand in writing.

14. He must discharge the duties of member of the board of examiners, of member of the state board of education, of member of the state board of land commissioners, of member of the state board of equalization, of member of the board of state prison commissioners and of the board of commissioners of the insane, deaf, dumb and blind.

15. He has such other powers and must perform such other duties as are devolved upon him by this code or any other law of this state.

Mullan v. State, 114 Cal. 586; 46 Pac. 670.

146. (§ 371.) *To transmit list of appointments to legislative assembly.*—Within ten days after the meeting of the legislative assembly, the governor must transmit to it a list of all appointments made by him under the provisions of § 424 (1105), of this code, made during the recess of the legislative assembly.

147. (§ 372.) *Records in office of.*—The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointee and predecessor.

148. (§ 373.) *Persons acting as governor.*—Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing, for the time being, the duties of governor.

149. (§ 374.) *Salary of governor.*—The annual salary of the governor, to include all services rendered ex-officio as member of any board or commission, as now required, or which may be by law hereafter devolved upon him, is five thousand dollars.

ARTICLE IV.

LIEUTENANT-GOVERNOR.

Section 150. Duties of.

“ 151. *Compensation of.*

“ 152. *When acting as governor.*

150. (§ 390.) *Duties of.*—The duties of the lieutenant-governor are prescribed in article VII. of the constitution.

151. (§ 391.) *Compensation of.*—The lieutenant-governor receives the same per diem and mileage as the speaker of the house of representatives, and that only during the session of the legislative assembly.

Wade v. Lewis & Clark Co., 24 Mont. 338; 61 Pac. 880.

152. (§ 392.) *When acting as governor.*—When the lieutenant-governor acts as governor he is entitled to receive, during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled, as lieutenant-governor, to any other compensation or mileage.

ARTICLE V.

THE SECRETARY OF STATE.

Section 153. *Custody of records.*

“ 154. *Duties of secretary of state.*

“ 155. *Distribution of Senate and House Journals.*

“ 156. *To mark books distributed.*

“ 157. *To superintend and take charge of state capitol.*

“ 158. *To furnish fuel and stationery.*

“ 159. *Form of documents.*

“ 160. *Series of documents.*

“ 161. *Exceptions.*

“ 162. *Secretary of state to number bills in the order of filing.*

“ 163. *Publication of Laws. Index.*

“ 164. *Expenses incurred, how paid.*

“ 165. *Fees of Secretary of State.*

“ 166. *Fraternal and religious societies. Fees.*

“ 167. *Water user's association exempt from payment of fees.*

“ 168. *Salary of Secretary.*

“ 169. *Official bond.*

153. (§ 400.) *Custody of records.*—The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.
3. Of the journals of the legislative assembly.
4. Of the great seal.
5. Of all books, records, deeds, parchments, maps, and papers kept or deposited in his office pursuant to law.

154. (§ 401.) *Duties of secretary of state.*—In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend at every session of the legislative assembly for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal, with his attestation, to commissions, pardons and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all the officers whose bonds are fixed by part III., of this code, and then deliver the originals to the state treasurer.

6. To take and file in his office receipts for all books distributed by him, and to direct the county clerks of each county to do the same.

7. To certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.

8. To furnish on demand to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited or recorded in his office.

9. To deliver to the printer entitled to the same at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions (with marginal notes), and journals, kept, passed or adopted at such session, with proper indexes to the same.

10. To notify, in writing, the county attorney of the proper county, of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

11. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights, and stationery.

12. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged; with the date, name of payor, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

13. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

14. To discharge the duties of member of the state board of ex-

aminers, of member of the state board of prison commissioners, of member of the state board of equalization, of member of the state board of pardons, of member of the state board of land commissioners, of member of state board of commissioners of insane, deaf, dumb and blind, and state sealer of weights and measures, and all other duties required of him by law.

15. To report to the governor at the time prescribed in § 443 (310), of this code, a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in § 446 (314), of this code.

16. To receive, designate and record marks and brands as provided in § 1791 (2491), of this code, and trade marks as provided in § 2037 (3161), of this code.

17. He must distribute of the bound volumes of the decisions of the supreme court, as soon as he receives them:

1. To the state librarian for the purposes mentioned in § 1211 (2384), of this code, who must distribute them as follows:

2. To the library of congress and the state library, each two copies.

3. To the governor of this state, and to the United States district judge for this state, to each of the justices of the supreme court, and to each of the judges of the district courts of the state, one copy. To the attorney general one copy, to each county attorney one copy, and to each clerk of the district court, one copy.

155. *Distribution of Senate and House Journals.*—Immediately after the laws, resolutions, and journals mentioned in subdivision 9 of the preceding section, are bound, the secretary of state must distribute the same as follows:

1. To each department of the government at Washington and of the government of this state, one copy.

2. To the library of congress and the state library, two copies each.

3. To the State Historical and Miscellaneous Library one hundred and fifty copies.

4. To each of the states and territories, one copy.

5. To the members of congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of this state, one copy.

6. To the lieutenant-governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state, and to the state university, one copy.

8. To the county clerk of each county three copies for the use of the county.

9. To each county attorney and to each clerk of the district court, one copy. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 86.*)

156. (§ 403.) *To mark books distributed.*—The secretary of state must indelibly mark each book distributed to officers in this state (except legislative officers), with the name of the county to which, and the official designation of the officer to whom it is sent. Such marked books remain the property of the state, and must be, by the officers receiving them, delivered to their successors.

157. (§ 404.) *To superintend and take charge of state capitol.*—The secretary of state is the superintendent and has charge of the state capitol, or rooms or buildings hired for that purpose, and he must keep the same, together with all property therein, in good order and repair, under the directions of the board of examiners.

158. (§ 405.) *To furnish fuel and stationery.*—It is the duty of the secretary of state to receive and keep all supplies and articles purchased by the board of examiners as a board of supplies, and must issue to any state officer or board, on the requisition of the board of examiners, any stationery, book or other supplies, and take a receipt therefor, and file said requisition and receipt in his office. He must keep a book called a "book of supplies," and enter therein a complete list of all stationery, books, articles or other supplies furnished him under contracts made by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article furnished each state officer or board, and each member of the legislative assembly. He must embody in his report to the legislative assembly a statement taken from such book, showing the amount of supplies purchased and disposed of.

159. (§ 406.) *Form of documents.*—That, as to their form, the public documents of the state of Montana shall be published under the direction of the secretary of state with the view to such uniformity of size, quality of paper, type and other particulars as will permit them to be formed in continuous numbers in consecutive volumes, and before any public printer or other person shall print any public document appropriate to be published in pamphlet or book form, the pay for which is to come from some public or municipal treasury, the proper party to print the same shall submit the copy to the secretary of state, who shall give directions as to the form and quality of the work and the paging thereof, as will permit it to be bound with other preceding or subsequent documents of like character, to the end that the same may

be preserved in the archives of the state without confusion and for the convenience of its citizens. [*Act approved March 6, 1895.*]

160. (§ 407.) *Series of documents.*—That the secretary of state shall divide the public documents to be published into several series, according to their several subjects, so near as may be, and no moneys shall be paid out of the treasury except on compliance herewith for any printing or publishing aforesaid. [*Act approved March 6, 1895.*]

161. (§ 408.) *Exceptions.*—The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, nor to bills printed for the legislative assembly or other printing for its use during its session, not appropriate to be put in pamphlet form. [*Act approved March 6, 1895.*]

162. *Secretary of State to number bills in the order of filing.*—It shall be the duty of the Secretary of State when bills passed by any Legislative Assembly of the State of Montana are filed in his office as directed in Section 101 (271) and 102 (272) of the Political Code, to note thereon the date of said filing and to number such bills, except resolutions, memorials and bills appropriating money, in the order of their reception by him, Chapter I, and upwards, using Arabic numerals for such numbering. [*Act approved February 23, 1903, § 1.*] (8th Sess. Chap. 17.)

163. *Publication of Laws.—Index.*—The Secretary of State, in pursuance of subdivisions 9, of Section 154 (401), of the Political Code, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

Chapter ———.

numbered from one upward, using Arabic numerals for such numbering, and he shall omit from the laws the statement "Senate Bill No. ——" and "House Bill No. ——" and hereafter reference to the laws of any Legislative Session may be made as follows: "Chapter, ——" (giving number) of the laws of ——" (giving the year in which same was enacted). Such laws shall be published in their numerical order, from I upwards as same have been filed in his office, and in such manner that each Section shall have a side head or marginal summary, and that the Chapter number shall appear as part of each page heading. *Provided,* that resolutions, memorials and bills appropriating money shall be printed in the latter part of the volume containing the said laws in the form and manner heretofore practised in publishing such laws. The Secretary of State shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several Codes of this State have been amended, re-

pealed, altered or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index." [Act approved February 24, 1903, § 2.] (8th Sess. Chap. 17.)

164. (§ 409.) *Expenses incurred, how paid.*—The expenses incurred by the secretary of state in carrying into effect the provisions of §§ 154 (401), 155 (402), 156 (403), 157 (404), and 158 (405), must be audited by the board of examiners and paid out of any moneys specially appropriated for the purpose.

165. (§ 410.) *Fees of Secretary of State.*—The Secretary of State, for services performed in his office, must charge and collect the following fees:

I. For each copy of any law, resolution or record, or other document or paper on file in his office, twenty cents per folio.

II. For affixing certificate and seal, One Dollar.

III. For issuing each certificate of incorporation and each certificate of increase of capital stock, Three Dollars.

IV. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to \$100,000.00, Fifty Cents per Thousand Dollars.

Additional from \$100,000.00 to \$250,000.00, Forty Cents per Thousand Dollars.

Additional from \$250,000.00 to \$500,000.00, Thirty Cents per Thousand Dollars.

Additional from \$500,000.00 to \$1,000,000.00, Twenty Cents per Thousand Dollars.

Additional over \$1,000,000.00, Ten Cents per Thousand Dollars.

Providing that no fee for filing any articles of incorporation or increase of capital stock shall be less than \$20.00, except religious societies, churches, and organizations for religious purposes, not having a capital stock, and not being organized for the purpose of profit.

V. For issuing each certificate of decrease of capital stock, Three Dollars.

VI. For recording and filing each certificate of decrease of capital stock, Five Dollars.

VII. For issuing each certificate of continuance of corporate existence, Three Dollars.

VIII. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to \$100,000.00, Twenty-five Cents per Thousand Dollars.

Additional from \$100,000.00 to \$250,000.00, Twenty Cents per Thousand Dollars.

Additional from \$250,000.00 to \$500,000.00, Fifteen Cents per Thousand Dollars.

Additional from \$500,000.00 to \$1,000,000.00, Ten Cents per Thousand Dollars.

Additional over \$1,000,000.00, Five Cents per Thousand Dollars.

IX. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, Three Dollars.

X. For filing each certified copy of charter or articles of incorporation of any foreign corporation, the same fee shall be charged as is provided for in Article IV of this Section, for domestic corporations.

XI. For filing each notice of appointment of agent, Five Dollars.

XII. For filing each annual or semi-annual statement of any foreign corporation, Five Dollars.

XIII. For receiving and recording each official bond, Two Dollars.

XIV. For each commission or other document, signed by the Governor and attested by the Secretary of State (Pardon and Military Commissions excepted), Five Dollars.

XV. For searching the records and archives of the State, One Dollar.

XVI. For filing each trade mark, Three Dollars; and for issuing each certificate of record, One Dollar.

XVII. For recording miscellaneous papers, records, or other documents, for filing, One Dollar; for recording, Twenty Cents per folio.

XVIII. For filing any other paper not otherwise herein provided for, One Dollar for filing and Twenty Cents per folio for recording.

That no member of the Legislative Assembly, or State or County Officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the Legislative Assembly relative to his official duties. Fees must be collected in advance, and when collected by the Secretary of State, must be paid to the State Treasurer at the end of each quarter, as provided in the Constitution. [*Act approved March 3, 1905.*] (*9th Sess. Chap. 74.*)

State v. Rotwitt, 17 Mont. 43; 41 Pac. 1004.

State v. Rotwitt, 17 Mont. 537, 43 Pac. 409.

State v. Rotwitt, 18 Mont. 87; 44 Pac. 922.

166. *Fraternal and religious societies.*—*Fees.*—The Secretary of State shall charge and collect from each religious society, church organization for religious purposes and fraternal society not having Capital Stock, and not being organized for the purpose of profit hereafter organized, a fee of Three Dollars (\$3.00)

for issuing certificate, One Dollar for filing, and twenty cents (20cts) per folio for recording, and he shall make no other charge, and collect no other fee for such filing, and for his certificate issued to such Corporation. [*Act March 2nd, 1903.*] (8th Sess. Chap. 43.)

167. *Water User's Association exempt from payment of fees*—That any water users' association, organized in conformity with the requirements of the laws of the United States and of the State of Montana, under the reclamation Act of June 17, 1902, which, under the articles of incorporation, is Authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the Secretary of State shall be required to pay only a fee of ten dollars for the filing and recording of such articles of incorporation and the issuance of certificate of incorporation. [*Act approved March 2, 1905.*] (9th Sess. Chap. 66.)

168. (§ 411.) *Salary of secretary.*—The annual salary of the secretary of state, to include all services rendered ex-officio as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars.

169. (§ 412.) *Official bond.*—The secretary of state must execute an official bond in the sum of ten thousand dollars.

ARTICLE VI.

AUDITOR.

Section 170. General duties of.

" 171. *Certificate of settlement.*

" 172. *Special duty as to school fund.*

" 173. *Order in which warrants must be drawn.*

" 174. *Proceedings against defaulters.*

" 175. *Salary of auditor, and duty as to fees.*

" 176. *To have access to offices.*

" 177. *Official bond.*

" 178. *Cancellation of unclaimed state warrants.*

170. (§ 420.) *General duties of.*—It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.

2. To report to the governor, on the first Monday of November next preceding each regular session of the legislative assembly, a statement of funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as

are provided for by permanent or temporary appropriation, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed, and to make a semi-annual report to the governor, as provided in § 446 (314) of this code.

3. To accompany his biennial reports with tabular statements, showing: First, the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any. Second, The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.

5. To suggest plans for the improvement and management of the public revenues.

6. To keep and state all accounts in which the state is interested.

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To audit all claims against the state in cases where there are sufficient provisions of law for the payment thereof.

11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

13. To require all persons who have received any moneys belonging to the state, and have not accounted therefor to settle their accounts.

14. In his discretion to inspect the books of any persons charged with the receipt, safe keeping, or disbursement of public moneys.

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require.

16. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against all debtors of the state; of which suits the courts of the county in which the seat of government may be located, have jurisdiction, without regard to the residence of the defendants.

17. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof.

18. To furnish the state treasury with a list of warrants drawn upon the treasury, specifying the amount and number of each warrant and the name of the person in whose favor it is drawn.

19. To procure and have printed all state licenses and to sign the same and furnish the state treasurer with such licenses and charge him with the same.

20. To prepare the statistics and matters mentioned in chapter XIX., title VII., part III., of this code.

21. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

22. To collect and pay into the state treasury all fees received by him.

23. To perform the duties of a member of the state board of equalization, and such other duties as are prescribed by law.

Bickerdike v. State, 144 Cal. 684, subd. 17; 78 Pac. 270.

171. (§ 421.) *Certificate of settlement.*—The certificate mentioned in subdivision 11, of § 170 (420), must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year.

172. (§ 422.) *Special duty as to school fund.*—The state

auditor must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must, on the first of February and the first day of August of each year report to the superintendent of public instruction a statement of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the state treasurer in favor of any county treasurer whenever such county treasurer presents, with his indorsement, an order drawn by the superintendent of public instruction in favor of such county.

173. (§ 423.) *Order in which warrants must be drawn.*—All warrants for claims which have been audited by the board of examiners and filed in his office must be drawn in the order of the numbers placed upon them by that board.

Proll v. Dunn, 80 Cal. 223; 22 Pac. 143.

174. (§ 424.) *Proceedings against defaulters.*—Whenever any person has received moneys, or has money or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to, and make settlement with, the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within twenty days after such requisition, the state auditor must state an account with such person, charging twenty-five per cent damages, and interest at the rate of ten per cent per annum from the time of the failure; a copy of which account in any suit therein is *prima facie* evidence of the things therein stated; but in case the state auditor cannot, for want of information, state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the state.

People v. Wilson, 117 Cal. 243; 49 Pac. 135.

175. (§ 425.) *Salary of auditor, and duty as to fees.*—The annual salary of the state auditor, to include all services rendered ex-officio as member of any board or commission as now required, or which may be by law hereafter devolved upon him, is three thousand dollars, and all fees received by him shall be covered into the state treasury.

176. (§ 426.) *To have access to offices.*—The state auditor shall have access to all offices of the state for the inspection of

such books, papers, and accounts thereof as may concern his duties.

177. (§ 427.) *Official bond.*—The state auditor must execute an official bond in the sum of thirty thousand dollars.

178. *Cancellation of unclaimed state warrants.*—The State Auditor shall cause to be plainly stamped the word “Cancelled because not claimed” upon any warrant issued by him, the owner of which may not have been found within six months after the date of the issue of such warrant, which cancellation shall be by stamp across the face of such warrant in red ink, and shall show the date of such cancellation. Such cancelled warrant shall also be filed in a special place or file in the office of the State Auditor, properly indexed, and shall be separated according to the designated funds shown thereon. The register of warrants in the office of the State Auditor, showing the issue of such warrant, shall show the cancellation of such warrant, and the date thereof, and the proper warrant account shall be charged therewith. Should a person subsequently claim such warrant the State Auditor shall, upon a satisfactory showing that such person is the holder of the claim and is entitled to receive the warrant, issue a lieu warrant to such owner, in the same amount and upon the same fund as that for which the original warrant was drawn, and shall enter such lieu warrant upon the warrant register in the usual manner, and note upon the cancelled warrant the date of the issue of such lieu warrant. [Act approved March 4, 1907.] (10th Sess. Chap. 80.)

ARTICLE VII.

TREASURER.

Section 179. *General duties.*

“ 180. *General fund.*

“ 181. *Registry and interest on state warrants.*

“ 182. *Act not to apply to land grant warrants.*

“ 183. *Designation of state depositories. Regulation of Depositories.*

“ 184. *Posting list of warrants.*

“ 185. *Must keep books open.*

“ 186. *Salary.*

“ 187. *Access to offices.*

“ 188. *Quarterly reports to governor.*

“ 189. *Bond of state treasurer.*

“ 190. *Quarterly report of depositories.*

“ 191. *Temporary suspension of treasurer.*

“ 192. *Appointment in place of suspended treasurer.*

179. (§ 440.) *General duties.*—It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the state auditor out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state auditor on the last day of each month the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor at the time prescribed in § 443 (310), of this code, the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years; and to make a semi-annual report to the governor as provided in § 446 (314), of this code.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge the duties of a member of the board of equalization, and such other duties as may be imposed upon him by law.

180. (§ 441.) *General fund.*—The general fund consists of moneys received into the treasury and not specially appropriated to any other fund.

181. *Registry and interest on state warrants.*—It is the duty of the State Treasurer on the presentation of State warrants, regularly issued, to pay the same out of any funds available for such payments, and in the event that there are no funds available for such payment, he must register each warrant in a book or register to be kept for the purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, the number and amount thereof, and he shall endorse on each war-

rant so registered, on its face, "Presented for payment, and not paid for want of funds, and registered in this office this. day of.," inserting the date of registration; and he shall affix his signature as such treasurer thereto; and all warrants so registered and endorsed shall bear interest at the rate of four (4) per cent per annum until called for payment, after which date interest shall cease; and all warrants shall be redeemed and paid in the order of their registration and in the manner set forth in Section 184 (444) of the Chapter hereinbefore mentioned. [*Act approved March 7th, 1899, § 1.*] (6th Sess. 98.)

182. *Act not to apply to land grant warrants.*—Nothing herein contained shall be construed to apply to any warrants issued on account of any Land Grant Fund, or by virtue of any special Act authorizing the issuance thereof. [*Act approved March 7th, 1899, § 2.*] (6th Sess. 99.)

183. *Designation of state depositories. Regulation of depositories.*—The State Treasurer shall designate as depositories, as many banks within the state as in his judgment are necessary for the safe keeping of the public moneys in his hands as hereinafter directed; provided that all banks by him designated as depositories shall undertake and agree, as a condition precedent to the depositing of any funds with them for safe keeping, that interest shall be paid upon the daily balances of all such deposits at the rate of two and a half per cent per annum, and all deposits shall be adequately and properly secured to the Treasurer as herein specified. No deposits shall be made of state funds by the State Treasurer until he shall first have received as security therefor, in amount at least equivalent to the amount of such deposit, bonds of the United States, or of the State of Montana, or county, school district, or municipal bonds issued in this state, or such other good and sufficient security as shall have been first approved by the State Board of Examiners. All such deposits shall be subject to withdrawal by the said treasurer in such amounts as may be necessary, from time to time, to pay and discharge the legal obligations of the state duly presented to him in accordance with the law. No deposit of said funds shall be made or permitted to remain in any bank unless the treasurer shall have first designated such bank as a depository, nor until the security for the deposit shall first have been deposited with the treasurer and have been approved by the State Board of Examiners. In designating the depositories for state funds, the State Treasurer shall, as near as may be found practicable, make designation of depositories in the respective counties of the state, and cause to be deposited in them public funds proportionate to the amount of public revenue received from such counties by the state. All interest paid and collected on deposits shall be, by the treasurer, credited and belong to the particular fund to which belong the moneys deposited and on which interest is paid. The treasurer shall

have the power to direct the withdrawal of all such moneys from any bank for any reason. Nothing herein contained shall be construed as limiting or impairing the right of the State Board of Land Commissioners to invest public moneys in bonds or other securities as otherwise provided for by law. [*Act approved March 7th, 1907, § 1.*] (10th Sess. Chap. 141.)

184. (§ 444.) *Posting list of warrants.*—The state treasurer must quarterly post upon the door of his office, a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the last quarter.

185. (§ 445.) *Must keep books open.*—The treasurer must keep his books open at all times for the inspection of the governor, state examiner, board of examiners, the members of the legislative assembly, and any committee appointed to examine them by either house thereof.

186. (§ 446.) *Salary.*—The annual salary of the state treasurer, to include all services rendered ex-officio as member of any board or commission as now required, or which may be hereafter by law devolved upon him, is three thousand dollars.

187. (§ 447.) *Access to offices.*—The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

188. (§ 448.) *Quarterly reports to governor.*—The state treasurer must keep a separate account of each fund in his hands, and must at the end of each quarter of the fiscal year report to the governor in writing under oath, the amount of all moneys in his hands to the credit of every such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The governor must verify said report and cause the same to be immediately published in at least one newspaper printed at the seat of government.

189. *Bond of State Treasurer.*—The State Treasurer must execute an official bond in the sum of five hundred thousand dollars, and may furnish as surety on said bond any surety company or companies which have complied with the laws of this state authorizing surety companies to do business herein, and in the event that he does furnish such surety on said bond the premium therefor shall be a proper charge against the state and paid as other expenses of his office. [*Act approved March 7, 1907, § 2.*] (10th Sess. Chap. 141.)

190. *Quarterly report of depositories.*—The President and Cashier of every bank in which state funds are deposited shall, quarterly, make a full and complete verified statement of account showing the amount of money which has been on deposit with the bank which they represent during the quarter, and the amount

of interest they have credited, allowed or paid to the State Treasurer on account of such deposit, and further, such affidavit shall contain a statement that no interest, consideration or emolument other than that prescribed by law has been, by such depository or any of its officers, paid into the State Treasurer or to any other person as an inducement for the deposit or for continuing the same with such depository. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 141.*)

191. (§ 450.) *Temporary suspension of treasurer.*—The state board of examiners, if, upon examination, find that the books of the state treasurer do not correspond with the amount of funds on hand, or do not show the actual condition of the funds, or if it appear to said board that any moneys belonging to the state have been embezzled, diverted, or in any manner taken from the treasury, without authority of law, or that the state treasurer has been guilty of negligence in keeping his books, or of taking care of the public moneys, must certify the fact to the governor, who, upon receipt of such certificate, must forthwith take possession of all books, moneys, papers and other property belonging to the state which have come into the possession of such state treasurer, by virtue of his office or otherwise, and must temporarily suspend him from his office of state treasurer.

State v. District Court, 22 Mont. 27; 55 Pac. 916. A grand jury was convened in Lewis and Clark County to investigate bribery charges made by members of the Sixth Legislative Assembly regarding the election of a United States Senator. The grand jury was instructed by the district judge that no person except the county attorney should be consulted as legal adviser or examine the

witnesses. The application of the attorney general to appear before the grand jury in this matter was refused. The attorney general possesses and exercises a supervisory power over county attorneys in all matters pertaining to their offices. The attorney general can do what the county attorney can do, and the attorney general has the right to appear before a grand jury and examine witnesses.

192. (§ 451.) *Appointment in place of suspended treasurer.*—The state board of examiners must thereupon procure the services of an expert to examine the books, papers, and all matters connected with the office of the state treasurer so suspended, and if it appears to said board on such examination that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of the public moneys, the governor, on the certificate of said board of that fact, must appoint another person to fill the place of such suspended state treasurer, and such person so appointed must execute an official bond, and enter upon the office of state treasurer, as provided by law.

The governor must report all his acts done under this and the next preceding section, to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is restored, or his successor is elected and qualified.

ARTICLE VIII.

ATTORNEY GENERAL.

Section 193. *General duties.*

“ 194. *Salary.*

“ 195. *Official bond.*

“ 196. *Assistants to Attorney General.*

“ 197. *Qualification of Assistants.*

“ 198. *Stenographer.*

“ 199. *Third Assistant Attorney General.*

“ 200. *Duty as to escheats.*

193. (§ 460.) *General duties.*—It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state or any officer thereof in his official capacity, is a party, and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not, if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing without fee, to the legislative assembly, or either house thereof, and to any state officer, board or commission, any county attorney, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien or incumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, board of pardons, state board of land commissioners, state board of education, state board of equalization, board of state prison commissioners, state board of commissioners for the insane, deaf, dumb and blind, and other duties prescribed by law.

12. To report to the governor at the time prescribed by § 443 (310), of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in § 446 (314) of this code.

Ind. Pub. Co. v. Lewis and Clark Co., 32 Mont. 85; 75 Pac. 861. The attorney general must appear in all cases to which the state is a party, but there is no law which authorizes the attorney general to contract on behalf of the county, and the county cannot legally pay expenses incurred in printing briefs on behalf of the state in a criminal cause on appeal.

McIntosh H. Co. v. Flathead Co., 32 Mont. 256; 80 Pac. 240. The attorney general is the attorney of record for a county and must be served with a copy of the transcript on appeal, and brief, when the county is the respondent; and the appeal must be dismissed upon the failure of appellant to serve the same.

194. (§ 461.) *Salary.*—The annual salary of the attorney general, to include all services rendered ex-officio as member of any board or commission as now required, or which may be hereafter devolved upon him by law, is three thousand dollars.

195. (§ 462.) *Official bond.*—The attorney general must execute to the state an official bond in the sum of ten thousand dollars.

196. *Assistants to Attorney General.*—The Attorney General of the State of Montana is hereby authorized to appoint two Assistant Attorneys General, who shall each receive as salary the sum of Twenty-Five Hundred (2500) Dollars per annum. [Act approved February 15, 1907, § 1.] (10th Sess. Chap. 13.)

197. *Qualification of assistants.*—Each of said Assistant Attorneys General must be duly licensed to practice law in the State of Montana, at the time of his appointment, and shall hold office during the pleasure of the Attorney General making the appointment. [Act approved February 15, 1907, § 2.] (10th Sess. Chap. 13.)

198. *Stenographer.*—The Attorney General is hereby authorized to appoint a Stenographer who shall receive as salary the sum of Eighteen Hundred (1800) Dollars per annum, and shall hold such position during the pleasure of the Attorney General making the appointment. [Act approved February 15, 1907, § 3.] (10th Sess. Chap. 13.)

199. *Third Assistant Attorney General.*—The Attorney General of the State of Montana is hereby authorized and empowered to appoint a third assistant at a salary of Twenty-five Hundred Dollars per annum, and an additional stenographer at a salary not exceeding Twelve Hundred Dollars per annum, in the event the work devolving upon his office and the public service seems to require it. [Act approved March 4, 1907.] (10th Sess. Chap. 83.)

200. (§ 463.) *Duty as to escheats.*—It is the duty of the attorney general to institute investigation for the discovery of all real and personal property which may have escheated or should escheat to the state, and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered, which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated, for the recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in title VIII., part III., code of civil procedure.

Estate of Miner, 143 Cal. 198; 76 Pac. 968.

ARTICLE IX.

STATE LAND AGENT.

Section 201. *Term of office.*

“ 202. *Salary.*

“ 203. *General duties.*

“ 204. *Bond.*

201. *Term of office.*—The Governor with the consent of the Board of Land Commissioners must appoint a State Land Agent who shall hold his office for the term of four years, or until his successor shall be appointed and qualified.

202. *Salary.*—The annual salary of the State Land Agent for the services rendered in any capacity whatever is the sum of Twenty-five (\$2,500) hundred dollars. The salary of the State Land Agent shall be paid out of any funds derived from the sale of State Lands and shall be apportioned among the several land grants to the State according to the amount of such lands selected under each of said grants and shall be determined by the State Board of Land Commissioners. [*Act approved March 4th, 1897, § 1.*] (*5th Sess. 104-105.*)

State v. Page, 20 Mont. 242; 50 Pac. 721. Where the state land agent sent his resignation in writing to the governor, who accepted it, there was a vacancy in

the office, although the board of land commissioners did not consent to the acceptance. This section makes no reference to vacancies.

203. (§ 471.) *General duties.*—It is the duty of the state land agent:

1. To select, subject to the rules and regulations presented by the secretary of the interior of the United States, and cause to be conveyed to the state of Montana, all school and indemnity lands, and all public lands donated to the state, for various institutions and public buildings, by virtue of an "Act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donation of public lands to said states," passed by the congress of the United States and approved February 22, 1889.

2. To discharge all duties relating to the public lands imposed upon him by title VIII., part III., of this code.

3. To perform such other duties as may be required of him by the state board of land commissioners and by law.

4. He is under the direction and control of the state board of land commissioners and must act under the direction of such board in the selection of lands, and report to that board.

204. (§ 473.) *Bond.*—The state land agent must execute an official bond in the sum of twenty thousand dollars.

ARTICLE X.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section 205. Duties.

" 206. *Salary.*

" 207. *Bond.*

205. (§ 480.) *Duties.*—The duties of the superintendent of public instruction are prescribed in title III., of part III., of this code.

206. (§ 481.) *Salary*.—The annual salary of the superintendent of public instruction is twenty-five hundred dollars.

207. (§ 482.) *Bond*.—The superintendent of public instruction must execute an official bond in the sum of ten thousand dollars.

ARTICLE XI.

STATE EXAMINER.

Section 208. Appointment and term of office.

“ 209. *Duties of State Examiner.*

“ 210. *Duty of State and County officers to aid in examination.*

“ 211. *Power to examine books and papers.*

“ 212. *Failure of county officers to transmit statement to State Examiner, Penalty.*

“ 213. *Salary and expenses of State Examiner.*

“ 214. *Assistants to State Examiner.*

“ 215. *State examiner's fund.*

“ 216. *Penalty for failure to pay examiner's fee.*

“ 217. *Bonds of state Examiner and assistants.*

208. *Appointment and term of office*.—There shall be a State Examiner who shall be appointed by the Governor and confirmed by the Senate, and shall hold his office for the term of four years and keep his office at the Capitol. [Act approved March 6, 1903, § 1.] (8th Sess. Chap. 100.)

Home L. Assn. v. Nolan, 21 Mont. 213; 53 Pac. 741.

State v. Aetna B. Co., 34 Mont. 381; 87 Pac. 269. This act must be strictly construed. Foreign corporations doing

business in this state were not included within the provisions of this act, and such corporations are not subject to the penalties there prescribed.

209. *Duties of State Examiner*.—The duties of State Examiner and his Assistants are: 1. To examine at least once every year the books and accounts of the State Treasurer, State Auditor, Secretary of State, Clerk of the Supreme Court, State Boiler Inspector, State Game Warden, Register of the State Land Offices, and any other State officer having the collection or handling of State money, County Treasurers, County Clerks, County Assessors, District Court Clerks, County Auditors, Sheriffs, Public Administrators, Boards of County Commissioners of each County, and all other officers and boards whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public moneys of any character or description.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all monies belonging to the State or Counties and to require of all officers an adherence to such general method and details as are required by law or prescribed by the State Examiner.

3. To visit each and every office of the Officers and institutions named in this Act at least once in every year; and at such times to examine the books accounts and vouchers in said offices, to verify statements of receipts, expenditures and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges for services, exacted by any officer, and of all claims allowed by Board of County Commissioners.

4. To visit once each year or oftener, without previous notice, each of the banks, banking corporations and savings banks, building and loan associations, investment and loan companies, incorporated under the laws of this State, or doing business under any law of the State concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violations of laws governing such banks, institutions and building and loan association.

5. The State Examiner after the examination of the affairs of any State officer, board or institution or Board of County Commissioners must make report to the Governor and to the Attorney General, the result of such examinations within thirty days thereafter and if any violation of law or non-performance of duty is found on the part of any such officer or board, they must be proceeded against by the Attorney General or County Attorney as provided by law.

6. The State Examiner, or his Assistant, after the examination of the affairs of any County officers must make report of such examinations to the County Commissioners and to the County Attorney of such County, within thirty days after such examinations, and if any violation of law or non-performance of duty is found on the part of any County Officer or Board such Officer or Board must be proceeded against by the County Attorney of the County as provided by law.

7. The State Examiner must make an annual report to the Governor immediately after the end of each fiscal year. [*Act approved March 6th, 1903.*] (8th Sess., Chap. 100.)

210. *Duty of State and County officers to aid in examination.*—All officers of the State and Counties and all officers and employees of all banking and other institutions mentioned in this Act, must afford all reasonable facilities for the investigation provided for in this Act, and all such officers, managers, and Employees must make return and exhibits to the State Examiner under oath, in such form and in such manner as he may prescribe, not conflicting with the present form of County records; every officer or person violating the provisions of this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months or by fine not exceed-

ing five hundred dollars, or both. [*Act approved March 6, 1903.*] (*8th Sess. Chap. 100.*)

211. *Power to examine books and papers.*—The State Examiner, or his Assistant, has power to examine any books, papers, accounts and documents in the office or possession of any County or State Officer, or banking or other institution referred to in this Act, and to send for persons or papers and to examine under oath any and all persons concerning the same. [*Act approved March 6, 1903.*] (*8th Sess. Chap. 100.*)

212. *Failure of county officers to transmit statements to State Examiner. Penalty.*—If any county clerk or county treasurer shall fail to make and transmit to the State Examiner's office any copy of any quarterly report required by the State Examiner, within ten days after the end of a quarter, or any annual financial statement of the county within twenty days after end of fiscal year, then said officer so required to furnish such report or copy shall forfeit to the county one hundred dollars to be deducted from his salary by the Board of County Commissioners of such county on notice of such failure from the State Examiner.

If any officer refuses or neglects to comply with a regulation prescribed by the State Examiner as authorized in paragraph 2 of § 209 (491) of the Political Code of Montana as amended by Chapter C, Acts of 1903, the salary of such officer shall, on request of the State Examiner, to the proper official, be withheld until such recreant official obeys, and the State Examiner certifies approval to the disbursing officer. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 149.*)

213. *Salary and expenses of state examiner.*—The salary of the State Examiner for all services rendered in any capacity whatever shall be twenty-five hundred dollars (\$2500.00) per year, and in addition thereto the state shall pay the necessary office and traveling expenses of himself and assistants, not exceeding two thousand five hundred dollars per annum. [*Act approved March 7th, 1907, § 1.*] (*10th Sess. Chap. 149.*)

214. *Assistants to state examiner.*—The State Examiner shall be allowed one first assistant at a salary of two thousand one hundred dollars per year; and one second assistant at a salary of fifteen hundred dollars per year; and one deputy at a salary of twelve hundred dollars per year; provided, that if at this session there is enacted a law placing private banks under the supervision of the State Examiner there shall be allowed an additional assistant and expense money as may be included in the general appropriation bill. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 149.*)

215. *State Examiner's Fund.*—That for the purpose of the just distribution of the expenses incurred in pursuance of this title, there is created a fund designated "State Examiner Fund." For the credit of said fund each county of the state shall pay to

the State Treasurer on or before the first day of July of each year, according to its classification as follows:

Counties of the first class	\$750.00 each.
Counties of the second class.....	350.00 each.
Counties of the third class.....	250.00 each.
Counties of the fourth class.....	200.00 each.
Counties of the fifth class.....	150.00 each.
Counties of the sixth class.....	125.00 each.
Counties of the seventh and eighth class	100.00 each.

Any counties hereafter created are to be deemed counties of the seventh class until an assessment of such county has been made and the class thereof determined, and for the maintenance of this fund for the years 1907 and 1908, if there is no subsequent legislation hereon, each county shall pay on its present classification and thereafter on the classification as made by law.

Each bank, banking corporation, savings bank, investment and loan company subject to supervision of the State Examiner under the laws of this state shall pay to the State Treasurer for the State Examiner's Fund, on or before the first day of November of each year a fee according to its capitalization at the following rates:—

Capital Stock up to \$25,000 inclusive, \$50.00; Capital Stock over \$25,000 and less than \$50,000, fee \$75.00; Capital Stock from \$50,000 to \$75,000 inclusive, fee \$100.00; Capital Stock over \$75,000 and to \$100,000 inclusive, fee \$150.00; Capital Stock over \$100,000 and to \$200,000 inclusive, fee \$200.00; Capital Stock over \$200,000 and less than \$300,000, fee \$250.00; Capital Stock \$300,000 and over, fee \$300.00.

Each building and loan association subject to examination by the State Examiner shall pay the State Treasurer on or before the first day of November of each year a fee of one-twentieth of one per cent. of its assets as shown by its last annual statement provided that no examination fee shall be less than twenty nor more than fifty dollars for a domestic association, nor more than two hundred dollars for a foreign corporation. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 149.*)

216. *Penalty for failure to pay examiner's fee.*—Any bank, banking corporation, savings bank, building and loan association, investment and loan company liable for a fee under § 215 (497) of this Act, that shall fail or neglect to pay the State Treasury within ten days after the first day of November each year the sum due as specified in the section next preceding shall forfeit to the state ten dollars (\$10.00), for every day it shall so fail or neglect, to be sued for and recovered in the name of the state by the County Attorney of the county in which the business of such banking association or corporation shall be located, and when so recovered, the amount shall be paid into the treasury of

such county for the use of the common schools therein. [*Act approved March 7th, 1907, § 1.*] (*10th Sess. Chap. 149.*)

217. *Bonds of state examiner and assistants.*—The State Examiner and his assistants may each be required to give an official bond in such sum as the Board of Examiners may fix; if required, said bond may be a surety company bond in which event the cost of said bond shall be a part of the expenses of the office and paid out of the appropriation for said expenses. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 149.*)

ARTICLE XII.

STOCK COMMISSIONERS AND STATE VETERINARY SURGEON.

218. (§ 520.) The stock commissioners and state veterinary surgeon must be appointed, hold their offices, discharge the duties, have the powers, and be entitled to compensation as provided in articles I. and IX., chapter IV., title VII., part III., of this code.

ARTICLE XIII.

SEALER OF WEIGHTS AND MEASURES.

Section 219. General duties of.

“ 220. *County clerks ex-officio sealers.*

“ 221. *Duties of county sealers.*

“ 222. *Standards for county sealers.*

“ 223. *Standards to be marked.*

“ 224. *Standards, county sealers to compare, etc.*

“ 225. *Fees.*

219. (§ 530.) *General duties of.*—The state sealer of weights and measures has the general supervision of the weights and measures of the state. He must take charge of the standards, procure, at the expense of the state, any that may be necessary, and see that they are kept in, and in no case removed from a fire proof vault in his office, except for the purpose of comparing and copying. He must correct the standards of the cities and counties, provide them with necessary standards, balances, and other means of adjustment, and as often as once in ten years compare the same with those in his possession. The standard weights and measures of the state are prescribed in chapter IX., title VII., part III., of this code.

220. (§ 531.) *County clerks ex-officio sealers.*—The county clerks are ex-officio county sealers of weights and measures of their respective counties.

221. (§ 532.) *Duties of county sealers.*—The county sealers must keep in their offices the standards of weights and measures for their respective counties.

222. (§ 533.) *Standards for county sealers.*—Copies of the

original standards, to be made of such material as the state sealer directs, must be deposited by him in the office of the county sealers of the respective counties of this state, at the expense of the counties, which are severally responsible for the preservation of the copies respectively delivered to them.

223. (§ 534.) *Standards to be marked.*—The state sealer must cause to be impressed on each of the copies of such original standards the letter “C” to indicate the word correct, and such other device as he may direct for the particular county; which device must be recorded in the state sealer’s office, and a copy thereof delivered to the respective county sealers.

224. (§ 535.) *Standards, county sealers to compare, etc.*—The county sealers must compare all weights and measures which are brought to them for that purpose, with the copies of the standards in their possession, and when the same are found or made to conform to the legal standards, the officer comparing them must seal and mark them as correct.

225. (§ 536.) *Fees.*—Each county sealer may receive for his services for the use of the county such fees as may be fixed by the state sealer, to be paid by the persons having weights or measures sealed and approved, which fees must be uniform for each county of the state. The board of county commissioners must furnish him the necessary tools, marks and brands to be used by him as county sealer.

ARTICLE XIV.

BOARD OF EXAMINERS.

Section	226.	<i>Board, how composed.</i>
“	227.	<i>Meetings.</i>
“	228.	<i>Records.</i>
“	229.	<i>Rules and regulations.</i>
“	230.	<i>Witnesses.</i>
“	231.	<i>Depositions.</i>
“	232.	<i>Claims for which appropriations have been made.</i>
“	233.	<i>Approval and warrant.</i>
“	234.	<i>If not approved.</i>
“	235.	<i>Claims provided for, but for which there is no appropriation.</i>
“	236.	<i>Unsettled claims.</i>
“	237.	<i>Time for meeting for action on unsettled claims.</i>
“	238.	<i>Proof and examination of such claims.</i>
“	239.	<i>Report on such claim.</i>
“	240.	<i>Disqualifications.</i>
“	241.	<i>Restrictions on power of board.</i>
“	242.	<i>Appeals.</i>

- Section 243. Auditor not to draw warrant for claims not audited.*
- “ 244. *Board may prevent payment of auditor's warrants.*
- “ 245. *Must examine books of auditor and treasurer.*
- “ 246. *Must make statement.*
- “ 247. *Auditor and treasurer must permit examination, etc.*
- “ 248. *Furnishing board.*
- “ 249. *Board of supplies.*
- “ 250. *Duty of such board.*
- “ 251. *Contracts must be advertised.*
- “ 252. *Contents of advertisement.*
- “ 253. *Awarding the contract.*
- “ 254. *State printing. Union label.*
- “ 255. *Penalty.*
- “ 256. *The bond.*
- “ 257. *Supplies may be classified.*
- “ 258. *Must be approved by governor and state treasurer.*
- “ 259. *For supplies for the legislative assembly.*
- “ 260. *Rooms for state officers.*
- “ 261. *No officer to be interested in contracts.*
- “ 262. *Board may employ clerical help for state officers.*
- “ 263. *Contracts in excess of appropriation prohibited.*

226. (§ 680.) *Board, how composed.*—The governor, secretary of state and attorney general constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board.

227. (§ 681.) *Meetings.*—The meetings of the said board are held at the seat of government on the third Monday in each month and such other times as the president may call it together; and the governor is the president and the secretary of state is the secretary of said board, and, in the absence of either, an officer *pro tempore* may be elected from their number.

228. (§ 682.) *Records.*—The board must keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered upon the minutes of the board before the same are acted upon.

229. (§ 683.) *Rules and regulations.*—The board may, in writing, establish rules and regulations, not inconsistent with law, for its government.

230. (§ 684.) *Witnesses.*—The president may issue subpoenas and compel the attendance of witnesses before the board, or any member thereof, in the same manner that any court in the state may; and whenever the testimony of any witness against a demand pending before it, is material, the president must cause the attendance of the witness before the board, or a member thereof, to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

231. (§ 685.) *Depositions.*—Each member of the board may take depositions to be used before it.

232. (§ 686.) *Claims for which appropriations have been made.*—Any person having a claim against the state, for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the secretary of the board must date, number, and file such claim, and the board must allow or reject the same in the order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month.

Sullivan v. Gage, 145 Cal. 765; 79 Pac. 737.

233. (§ 687.) *Approval and warrant.*—If the board approve such claim they must indorse thereon over their signatures, "Approved for the sum of ——— dollars," and transmit the same to the office of the state auditor; and the auditor must draw his warrant for the amount so approved, in favor of the claimant, or his assigns, in the order in which the same was approved.

Proll v. Dunn, 80 Cal. 223; 22 Pac. 143.

234. (§ 688.) *If not approved.*—If the board disapprove such claim, it must cause the same to be filed with the records of the board, with a statement showing such disapproval and the reasons therefor.

County v. Gage, 139 Cal. 404; 73 Pac. 174.

235. (§ 689.) *Claims provided for, but for which there is no appropriation.*—If no appropriation has been made for the payment of any claim presented to the board the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislative assembly with a statement of their approval.

236. (§ 690.) *Unsettled claims.*—Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the

board of examiners, at least two months before the meeting of the legislative assembly, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

237. (§ 691.) *Time for meeting for action on unsettled claims.*—On the first Monday of November preceding the meeting of each legislative assembly, the board must hold a session for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. They must cause a list and brief abstract of all claims filed with them up to that date to be made and published in some newspaper at the seat of government for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims.

238. (§ 692.) *Proof and examination of such claims.*—The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the legislative assembly such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the board may have, touching such claims.

239. (§ 693.) *Report on such claim.*—The board must make up their report and recommendations at least thirty days before the meeting of the legislative assembly. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at the seat of government, for such time as the board may prescribe, before the meeting of the legislative assembly.

240. (§ 694.) *Disqualifications.*—No member of the board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made.

241. (§ 695.) *Restrictions on power of board.*—The board must not entertain for the second time a demand against the state once rejected by it, or the legislative assembly, unless such facts are presented to the board as in suits, between individuals, would furnish sufficient ground for granting a new trial.

Sullivan v. Gage, 145 Cal. 770; 79 Pac. 537.

242. (§ 696.) *Appeals.*—Any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislative assembly of the state, by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislative assembly.

243. (§ 697.) *Auditor not to draw warrant for claims not audited.*—The state auditor must not draw his warrant for any claim unless it has been approved by the board, except for salaries or compensation of officers fixed by law.

Sawyer v. Colgan, 102 Cal. 285; 36 Pac. 580.

244. (§ 698.) *Board may prevent payment of auditor's warrants.*—Whenever the board has reason to believe that the state auditor has drawn, or is about to draw his warrant without authority of law, or for a larger amount than the state actually owes, the board must notify the state treasurer not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislative assembly or the board.

245. (§ 699.) *Must examine books of auditor and treasurer.*—As often as it may deem proper the board must examine the books of the state auditor and state treasurer, the accounts and vouchers in their offices, and count the money in the treasury, and for that purpose they may demand and the state auditor and state treasurer must furnish without delay, all information touching the books, papers, vouchers, or matters pertaining to their offices.

246. (§ 700.) *Must make statement.*—The board must, at least, once in each month, make and file in the office of the secretary of state, and publish in some newspaper at the seat of government, a statement showing the amount of money in the treasury.

247. (§ 701.) *Auditor and treasurer must permit examination, etc.*—The state auditor and state treasurer must permit the board of examiners to examine the books and papers in their respective offices, and the treasurer must permit the money in the treasury, without delay on any pretense whatever, to be counted whenever the board wishes to make an examination or count.

248. (§ 702.) *Furnishing board.*—That the governor, secretary of state and attorney general of the state of Montana are hereby constituted ex-officio a furnishing board, with the powers and duties hereinafter specified. [Act approved March 3, 1895.]

259. (§ 703.) *Board of supplies.*—The board of examiners is also a board of supplies and furnishing board.

250. (§ 704.) *Duty of such board.*—It is the duty of such board:

1. To contract for the furnishing of all stationery, printing, binding, paper, fuel, lights, and other necessary supplies, to be used by the legislative assembly and all other departments of the government, and the printing, binding and distributing of the laws, codes, journals, department reports, reports of the decisions

of the supreme court, and all other printing and binding, and repairing of any books used by any state officer or department.

2. To hire all offices for the state officers, and to furnish the same; to keep the furniture in repair, and to hire and furnish halls and rooms for the use of the legislative assembly, and to provide furniture therefor, and keep the same in repair.

3. To cause to be deposited in the office of the secretary of state all stationery, books and other articles and supplies furnished and on hand, and to issue to any officer a requisition on the secretary of state for any books, stationery, or other supplies needed by such officer.

4. At the end of each fiscal year, and at such other times as the board thinks proper, to cause an inventory to be taken of all articles and supplies on hand and contracted for, and to make an examination of all accounts and vouchers for such supplies.

5. To establish rules for the government of the board in relation to all contracts not inconsistent with law.

State v. Smith, 23 Mont. 44; 57 Pac. 449. Sections 704-714 inclusive provide for the letting of a contract by the state board of examiners for state printing.

251. (§ 705.) *Contracts must be advertised.*—Before any contract is let the board must advertise for twenty days in two daily newspapers printed in the state, one of which must be published at the seat of government, for sealed proposals to furnish any and all the supplies mentioned in the next preceding section.

State v. Toole, 26 Mont. 35; 66 Pac. 501. An advertisement for the furnishing of supplies to the state was published in a daily newspaper printed at the seat of government, but it was not printed in any other newspaper within the state.

This section was not complied with, and therefore the agents of the state could not make a valid contract. This section is not repugnant to Section 30, Article V of the constitution.

252. (§ 706.) *Contents of advertisement.*—The board must specify in the advertisement the amount and kind of each article required. A sample and minute description of each article must accompany and be deposited with each proposal.

State v. Toole, 26 Mont. 27; 66 Pac. 498.

253. (§ 707.) *Awarding the contract.*—The proposals received must be directed to the board, opened and compared by it at its office at twelve o'clock, noon, of the day specified in the advertisement, and the board must award the contract for furnishing such supplies, or any of them, to the lowest responsible bidder at such time.

State v. Toole, 26 Mont. 28; 66 Pac. 499. The board of examiners must award the contract to the lowest responsible bidder, unless the bids be rejected, and cannot insert in the written contract any condition not consonant with the contract made by the acceptance of

the bid. In the absence of fraud or other legal reason sufficient to render the acceptance void or voidable, the contract resulting therefrom cannot (unless by mutual consent) be changed or annulled, nor may its obligations be impaired, by any act of the board.

254. *State printing.—Union Label.*—All printing for which the State of Montana is chargeable, including reports of State Officers, State Boards, Pamphlets, Blanks, Letter-heads, En-

velopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, shall have the label of the branch of the International Typographical Union of the city in which they are printed. [*Act approved March 3rd, 1897, § 1.*] (5th Sess. 58.)

255. *Penalty.*—Any officer of the State who shall accept any printed matter, save and except certificates named in Section 1, for which the State is chargeable, which does not bear a label indicating that it was printed in an office under the jurisdiction of the International Typographical Union, shall be subject to a fine of Fifty Dollars for each and every offense. [*Act approved March 3rd, 1897, § 2.*] (5th Sess. 58.)

256. (§ 708.) *The bond.*—Each bid must be accompanied by a bond with two or more sureties in a sum not less than twice the amount of the value of the articles to be supplied, payable to the state, conditioned that if the bidder receives the contract he will deliver the supplies for which he has contracted, under such rules and regulations as the board may prescribe; and for the faithful performance of the contract.

State v. Hogan, 22 Mont. 385; 56 Pac. 818.

State v. Toole, 26 Mont. 27; 66 Pac. 498.

State v. Smith, 23 Mont. 46; 57 Pac. 449.

257. (§ 709.) *Supplies may be classified.*—The board may in the advertisement classify the supplies and articles to be furnished, and may receive bids, and award contracts for such separate class of supplies, or such separate articles, as it considers the lowest and best bid. The board may require any class of supplies or separate articles thereof to be delivered in installments. Any and all bids may be rejected, and the board may advertise again.

State v. Toole, 26 Mont. 29; 66 Pac. 499.

258. (§ 710.) *Must be approved by governor and state treasurer.*—All contracts made by the board must be approved by the governor and the state treasurer.

State v. Hogan, 22 Mont. 389; 56 Pac. 820. This section must be complied with and the contract of a party with the board of examiners to do the state printing, without the approval of the governor and state treasurer is void.

State v. Smith, 23 Mont. 47; 57 Pac. 449. The contract referred to in State

v. Hogan, supra, was again before the Supreme Court. The duty of the governor and state Treasurer to approve such contract let by the board of examiners involves judicial discretion, and cannot be controlled by mandamus.

State v. Toole, 26 Mont. 29; 66 Pac. 499.

259. (§ 711.) *For supplies for the legislative assembly.*—The board must, at least one month before the meeting of the legislative assembly, advertise as provided in the preceding sections, for the repairing and furnishing the halls and rooms, and stationery, fuel, light, and such other supplies as are necessary for the members of the legislative assembly, at the ensuing session, and at the commencement of each session thereof the board must

report to the legislative assembly an account of the supplies, expenditures for the same, and the stock on hand.

260. (§ 712.) *Rooms for state officers.*—The board may hire the necessary rooms for the state officers, and halls and rooms for the legislative assembly and its committees, without advertising as provided in this article, if the board so decide.

261. (§ 713.) *No officer to be interested in contracts.*—No member or officer of any department of the government must be in any way interested in any contract made under the provisions of this article.

262. (§ 714.) *Board may employ clerical help for state officers.*—The board of examiners may at any time when necessary, employ clerical help for any state officer or board, and no clerks must be employed by such officers or board without the authority of the board of examiners, and no such clerks must be employed by the board of examiners except when all the duties of the office cannot be performed by the officer himself.

263. *Contracts in excess of appropriation prohibited.*—No State officer, State Board of trustees, or managers or commissioners shall have any authority to, or shall contract any liability or indebtedness whatever in excess of the amount appropriated to such officer, board of trustees, or managers or commissioners, or for the office, institution, commission or organization under his or their management or control, without previous authorization from the State Board of Examiners, and if any liability or indebtedness be incurred or expenditure be made, in violation of this act, no claim therefor shall be allowed by the State Board of Examiners. [Act approved February 21, 1907.] (10th Sess. Chap. 26.)

ARTICLE XV.

BOARD OF CAPITOL COMMISSIONERS.

Section 264. *Membership.*

“ 265. *National flag to be displayed.*

“ 266. *Duties of Secretary of State.*

“ 267. *Appropriation.*

“ 268. *Salaries of engineers and janitors.*

“ 269. *State board of examiners to employ laborers.*

“ 270. *Grand Army of the Republic; record room.*

264. (§ 730.) *Membership.*—The governor, the secretary of state, and the attorney general, are hereby constituted a board of capitol commissioners. [§ 730. Act approved March 13, 1895.]

265. *National flag to be displayed.*—That the National flag shall be kept unfurled, displayed and floating from a suitable flag-staff to be erected upon the State Capitol Grounds from 8 o'clock A. M. to 5 o'clock P. M. of each and every day of the year; provided, that the flag shall not be so unfurled or displayed or al-

lowed to remain floating when by reason of violent wind or other inclemency of the weather there is danger of destruction of, or material injury to, such flag. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 157.*)

266. *Duties of Secretary of State.*—That for the purposes of carrying out the provisions of this Act the Secretary of State is hereby authorized and directed to have erected on the State Capitol grounds a suitable flagstaff of proper dimensions and to provide the necessary flag or flags of proper dimensions and suitable material, and to cause the said flag to be unfurled, displayed and kept floating as above provided. [*Act approved March 7, 1907, § 2.*] (*10th Sess. Chap. 157.*)

267. *Appropriation.*—That the necessary expenses incident to the carrying out of this Act shall be paid out of such moneys as shall be appropriated for the maintenance of the Capitol Building and grounds, and that the sum of fifteen hundred dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, to pay for the same and to carry this bill into effect. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 157.*)

268. *Salaries of engineers and janitors.*—That the following schedule of wages be and is hereby authorized for the employment of persons in the operation of the heating plant of the State Capitol: Head Engineer, \$125.00 per month, Night Engineer, three Dollars and fifty cents per shift; day fireman, three dollars per day, and that all other employees shall receive three dollars per day for each day employed and the Head Janitor shall receive in addition thereto, the sum of Ten Dollars per month. [*Act approved March 6, 1903, § 1.*] (*8th Sess. Chap. 104.*)

269. *State board of examiners to employ laborers.*—That the State Board of Examiners is hereby authorized and empowered to employ said labor as directed by the wage schedule of Section 1 of this Act. [*Act approved March 6, 1903, § 2.*] (*8th Sess. Chap. 104.*)

270. *Grand Army of the Republic, record room.*—The Governor and Secretary of State are hereby authorized and directed to set apart a suitable room, in the Capitol Building of the State of Montana, for the storage and safe keeping of archives, records, etc., of the Grand Army of the Republic. [*Act approved March 5th, 1903,*] (*8th Sess. Chap. 76.*)

ARTICLE XVI.

STATE BOARD OF CHARITIES AND REFORM.

Section 271. Creation of board.

“ 272. *Membership; term.*

Section 273. Meetings.

“ 274. *Officers. Election.*

“ 275. *Duties.*

“ 276. *Same.*

“ 277. *Same.*

“ 278. *Powers.*

“ 279. *Report.*

“ 280. *Members must not be interested in certain contracts.*

“ 281. *Expenses.*

271. (§ 740.) *Creation of board.*—To the end that the administration of public charity and correction may be conducted upon sound principles of economy, justice and humanity, and that the relations between the state and its dependent and criminal classes may become better understood, there is hereby created a state board of charities and reform. [*Act approved March 9, 1893.*]

272. (§ 741.) *Membership; term.*—That the said board shall consist of three members, who shall be nominated by the governor, and confirmed by the senate, and shall hold their offices for the term of six years and until their successors are appointed and qualified, except that at the first appointment, the term of one member shall be fixed for two years, of another for four years, and of another for six years. Where any vacancy shall occur in the board during the recess of the senate, by resignation, death or otherwise, the governor shall appoint a new member to serve for the residue of the unexpired term. [*Act approved March 9, 1893.*]

273. (§ 742.) *Meetings.*—The board shall meet in the office of the secretary of state within sixty days after their appointment to organize and transact such other business as may be necessary to carry into effect the provisions of this act. They shall afterwards meet in October, on or before the fifteenth day, and in January on or before the tenth day in each year; and they may hold such other meetings as they may decide upon. [*Act approved March 9, 1893.*]

274. (§ 743.) *Officers. Election.*—The officers of the board shall consist of a president and secretary to perform the duties usually devolved upon such officers. The president and secretary shall be elected at the annual meeting to be held on or before the fifteenth day of January, and shall serve until their successors are elected. [*Act approved March 9, 1893.*]

275. (§ 744.) *Duties.*—It shall be the duty of the board to investigate and supervise the whole system of the charitable and correctional institutions supported by the state or receiving aid from the state treasury, by personal visits to such, making themselves familiar with all matters necessary to be understood in

judging of their usefulness and of the honesty and economy of their management; and it shall be their duty to recommend such changes and additional provisions as they may deem necessary for their greater economy and efficiency. [*Act approved March 9, 1893.*]

276. (§ 745.) *Same.*—It shall be the further duty of the board to commence and to conduct a course of investigation into the condition of poor houses in the state, personally visiting and inspecting them from time to time, ascertaining how many persons of each sex are therein maintained, at what cost, and under what circumstances, as to health, comfort, and good morals; how many insane persons are therein confined, and whether such arrangements are made for their care as humanity demands; also how many idiotic persons are therein supported; also how many poor children the said poor houses contain and what provision is made for their suitable care and education. They shall also collect statistics as to the number of the poor who are supported or relieved by towns or otherwise at the public expense, outside of poor houses, the cost at which support or relief is furnished, and any other important facts therewith connected. They shall also inquire to what extent the provisions of the law in regard to binding out poor children are complied with; and in general they shall seek to collect such facts as may throw light upon the adequacy and efficiency of existing provisions for the support and relief of the poor, and any causes operating to increase or diminish the amount of pauperism in the state, or to place the burden of relieving it where it does not properly belong. [*Act approved March 9, 1893.*]

277. (§ 746.) *Same.*—It shall be the further duty of the board to commence and conduct a course of investigation in regard to jails, city prisons, houses of correction, and other places in the state in which persons convicted or suspected of crime, or any insane persons are confined, ascertaining by visits or otherwise, their sanitary condition, their arrangement for the separation of hardened criminals from juvenile offenders, and from persons suspected of crime or detained as witnesses; also whether any useful employment is furnished for prisoners, whether the insane are treated with due regard to humanity, and what efforts are put forth for the reformation of criminals; and in general they shall endeavor to ascertain for the information of the legislature, any important facts or considerations bearing upon the best treatment of criminals, and the diminution of crime. [*Act approved March 9, 1893.*]

278. (§ 747.) *Powers.*—The board shall have full power at all times to look into and examine the condition of the institutions and establishments referred to in this act, to inquire into and examine their methods of treatment, instruction and govern-

ment and management of their inmates, the official conduct of trustees, managers, directors, superintendents, and other officers and employes of the same, the condition of the buildings, grounds, and other property connected therewith, and into all other matters pertaining to their usefulness and good management; and for these purposes they shall have free access to all parts of the grounds and buildings and to all books and papers of said institutions and establishments; and all persons now or hereafter connected with the same are hereby directed and required to give either verbally or in writing, as the board may direct, such information and to afford such facilities for inspection as the board may require. [*Act approved March 9, 1893.*]

279. (§ 748.) *Report.*—On or before the fifteenth day December in each year the board shall present to the governor a report of their proceedings and of their expenses under the act. Said report shall contain a concise statement of the condition of each of the charitable and correctional institutions supported by the state or receiving aid from the state treasury, together with their opinion of the appropriation proper to be made, for each, for the following year. It shall also embody the results of their investigations during the year in regard to the support of the poor, and the treatment of criminals, and shall also contain any information, suggestions or recommendations which they may choose to present upon the matters by this act assigned to their supervision and examination. One thousand copies of this report shall be printed by the state printer in the same manner as those of state officers are printed for the use of the board, and of the legislature. [*Act approved March 9, 1893.*]

280. (§ 749.) *Members must not be interested in certain contracts.*—All members of the board, and the secretary of the board, are hereby prohibited from being interested, directly or indirectly, in any contract or arrangement for building, repairing, furnishing, or providing any supplies of either of the institutions placed under their supervision. [*Act approved March 9, 1893.*]

281. (§ 750.) *Expenses.*—The members of the board shall receive no compensation for the services rendered under this act. Upon filing with the state board of examiners sworn statements of the amount of the expenses actually and necessarily incurred by them in carrying out the other provisions of this act, they shall have the amount of said expenses refunded to them from the state treasury, and the state auditor is hereby authorized and required to draw his warrant on the state treasurer for the amount of expenses so incurred and proven. And there is hereby appropriated out of any money in the treasury, not otherwise appropriated, a sum sufficient to comply with the provisions of this act. The board shall be supplied with all necessary stationery, blanks,

printing, postage stamps, stamped envelopes for their own use, and for the use of their secretary, in the same manner in which state officers are now supplied with these articles. And there is hereby appropriated out of any money in the treasury not otherwise appropriated, a sum sufficient to comply with the provisions of this act, not to exceed one thousand dollars in amount for any one year. [*Act approved March 9, 1893.*]

ARTICLE XVII.

BUREAU OF AGRICULTURE, LABOR AND INDUSTRY.

Section 282. Officers, terms, bond.

“ 283. *Duty of Commissioner.*

“ 284. *Powers of commissioner.*

“ 285. *Salary of commissioner.*

“ 286. *Office expenses.*

“ 287. *General expenses.*

“ 288. *Free public employment office in cities.*

282. *Officers; terms; bond.*—A bureau of agriculture, labor and industry is hereby established for this state whose executive officers shall be a commissioner, appointed by the Governor, and a chief clerk who shall be appointed by the commissioner. The term of office of the Commissioner shall be four years, and he may be removed by the Governor for incompetence, negligence or malfeasance in office. The commissioner shall execute a bond in the penal sum of five thousand dollars, to be approved by the Governor, and to be filed with the State Auditor for the faithful performance of his duties. [*Act approved March 4th, 1897, § 1.*] (*5th Sess. 110.*)

283. *Duty of commissioner.*—The commissioner shall collect, assort and arrange, systematize and present in an annual report to the Governor on or before the first day of December in each year, statistical details relating to all departments of labor and industry in the State of Montana, especially in relation to the agricultural, commercial, mining, manufacturing, educational and social interests and sanitary condition of the laboring classes and to the prosperity of all the productive industries of the State. [*Act approved March 4th, 1897, § 2.*] (*5th Sess. 110.*)

284. *Powers of commissioner.*—The commissioner shall have the power to administer oaths, have and use a seal, with power, to examine witnesses under oath, to take depositions or cause the same to be taken by any one authorized to take depositions, and said commissioner may depute any male citizen over the age of twenty-one years to serve subpoenas upon witnesses who shall be summoned in the same manner as witnesses before the district court, and any person or owner, operator, or lessee of any mine, factory, workshop, smelter, mill, ware-house, elevator, foundry,

machine shop or other establishment, any agent or employee of such owner, operator, manager or lessee, who shall refuse to said commissioner admission therein for the purpose of inspecting, or who shall when requested by him willfully neglect or refuse to furnish to him any statistics or other information relating to his lawful duties, which may be in their possession or under their control, or who shall willfully neglect or refuse for thirty days to answer questions by circular or by personal application, or who shall knowingly answer such questions untruthfully or who shall refuse to obey any such subpoenas and give testimony according to the provisions of this Act, shall for every such willful neglect or refusal be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than fifty nor more than one hundred dollars. Provided, that no witness shall be compelled to answer questions respecting his private affairs nor to go outside of his own county to give testimony. [*Act approved March 4th, 1897, § 3.*] (*5th Sess. 110-111.*)

285. *Salary of commissioner.*—The Commissioner of said Bureau shall receive an annual salary of twenty-five hundred (\$2500.00) dollars, and the Chief Clerk an annual salary of eighteen hundred (\$1800.00) dollars. [*Act approved March 7, 1907.*] (*10th Sess. Chap. 129.*)

286. *Office; expenses.*—The office of said commissioner shall be at the Capitol of the State where all the books, records and statistics of the bureau shall be kept. The rent, salaries and other expenses of the said office shall be paid by the State in the same manner as is provided by law for the payment of the salaries and expenses of other State Officers. [*Act approved March 4th, 1897, § 5.*] (*5th Sess. 111.*)

287. *General expenses.*—The commissioner may incur such expenses as is necessary in the discharge of the official duties of said bureau, provided that such expense, including pay of commissioner and chief clerk, shall not exceed the amount appropriated therefor in each year. [*Act approved March 4th, 1897, § 6.*] (*5th Sess. 111.*)

288. *Free public employment office in cities.*—It shall be lawful for the common Council of any incorporated city within this State to provide for the establishment of a free public employment office to be conducted on the most approved plans, and to provide for the expenses thereof out of the revenues of the city in which the same is established. The annual report of the commissioner of agriculture, labor and industry shall contain a detailed account of the transactions of all free employment offices within the State, showing the number of applicants for help, the number of applicants for employment, male and female, the number securing employment through said offices and the expenses thereof. [*Act approved March 4th, 1897, § 7.*] (*5th Sess. 111-112*)

ARTICLE XVIII.

POWERS AND DUTIES OF OTHER EXECUTIVE OFFICERS.

289. *State boards.*—1. The powers and duties of the state board of equalization are prescribed in title XII., part III., of this code.

2. Those of the state board of education in chapter I., title III., part III., of this code.

3. Those of the trustees of the state library and state librarian in chapter III., title V., part III., of this code.

4. Those of the board of state prison commissioners in part III., of the Penal Code.

5. Those of the board of commissioners of the insane, deaf, dumb and blind, and other officers in chapters I. and II., title V., part III., of this code.

6. Those of the commissioner of agriculture, labor and industry, are to be prescribed in statutes when enacted. Chapter III., title XVII., part III.

7. Those of the board of state land commissioners in title VIII., part III., of this code.

CHAPTER IV.

JUDICIAL OFFICERS.

290. (§ 850.) The number, designation and mode of election of judicial officers are fixed in title I., part I., of the Code of Civil Procedure.

CHAPTER V.

SALARIES OF JUSTICES OF THE SUPREME COURT AND DISTRICT JUDGES
AND OFFICERS CONNECTED WITH THE SUPREME COURT.

Section 291. Salaries of justices of supreme court.

“ 292. *Salaries of district judges.*

“ 293. *Expenses when sitting out of district.*

“ 294. *Audit of expense account.*

“ 295. *Marshal.*

“ 296. *Duties.*

“ 297. *Compensation.*

“ 298. *Accounts.*

291. *Salaries of justices of supreme court.*—The annual salary of each Justice of the Supreme Court is Six Thousand Dollars. [Act approved February 27, 1905, § 1.] (9th Sess., Chap. 43.)
(This act takes effect January 1, 1909.)

292. *Salaries of district judges.*—The annual salary of each District Judge is Four Thousand Dollars. [Act approved February 27, 1905.] (9th Sess., Chap. 43.)

(Takes effect first Monday, January, 1909.)

293. *Expenses when sitting out of district.*—Every judge who shall sit in the place of another Judge in the trial or hearing of an action or proceeding in a District other than his own, or, in the Supreme Court, shall be paid his actual expenses while engaged in that service as follows: His actual traveling expenses in going from the County Seat which he makes his place of residence to the place of trial, and return, and his board and lodging while engaged in the trial or hearing. [Act approved February 1, 1907, § 1.] (10th Sess., Chap. 3.)

294. *Audit of expense account.*—As soon as his services in connection with the trial or hearing are concluded the Judge shall certify in detail the amount of money necessarily and actually expended by him for his traveling expenses and board and lodging as above specified and shall file the claim for such services with the State Board of Examiners who shall audit it, and if found correct by them, they shall transmit the claim to the State Auditor with their approval endorsed thereon, and the State Auditor must draw his warrant for the amount so approved in favor of the claimant, or his assigns, in the order in which the same was approved. [Act approved February 1, 1907.] (10th Sess. Chap. 3.)

295. (§ 862.) *Marshal.*—The supreme court must appoint a marshal of the supreme court, who holds office at the pleasure of the court.

296. (§ 863.) *Duties.*—It is the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court, and shall act as crier thereof. He must serve within the state all writs and process issuing from the supreme court, and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts, so far as the same are applicable.

297. (§ 864.) *Compensation.*—The marshal is entitled to compensation as follows: For each day's actual attendance upon the court and justices as hereinbefore provided, he receives the sum of four dollars; but in reckoning his per diem allowance as aforesaid, he may include all days from the first day to the last day of the term, inclusive, including days when the court is in recess during the term and the marshal is in attendance upon the justices as aforesaid, but Sundays and other non-judicial days must not be included. And when serving process of court beyond the place where the court is held, the marshal is entitled to receive the same mileage as provided by law for sheriffs in doing similar services, to be taxed as costs in other cases.

298. (§ 865.) *Accounts.*—All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice, and when properly chargeable against the state and approved by the state board of examiners, must

be paid out of the state treasury upon the warrant of the state auditor.

CHAPTER VI.

MINISTERIAL AND OTHER OFFICERS CONNECTED WITH THE COURTS.

- ARTICLE I. CLERK OF THE SUPREME COURT.
- II. REPORTER OF THE SUPREME COURT.
- III. NOTARIES PUBLIC.
- IV. COMMISSIONERS OF DEEDS.
- V. OTHER OFFICERS.

ARTICLE I.

CLERK OF THE SUPREME COURT.

- Section 299. Election and term of office.*
- “ 300. *General duties.*
- “ 301. *Fees.*
- “ 302. *Duties.*
- “ 303. *Settlements, when and how made.*
- “ 304. *Salary of clerk of supreme court.*
- “ 305. *Official bond.*

299. (§ 870.) *Election and term of office.*—There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election, except that the clerk first elected under the constitution holds his office only until the general election in the year one thousand eight hundred and ninety-two, and until his successor is elected and qualified.

300. (§ 871.) *General duties.*—The clerk of the supreme court must perform such duties as are prescribed by law and the rules and practice of the court.

301. (§ 872.) *Fees.*—He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars payable by the appellant, and five dollars payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars, in full for all services rendered in each cause; for certificate of admission as attorney and counsellor, five dollars; for making transcripts, copies of papers or record, fifteen cents per folio; for comparing any document requiring a certificate, five cents per folio; for each certificate under seal, one dollar.

All fees collected by him must be paid into the state treasury, eighty per cent. thereof to the credit of the general fund, and twenty per cent. thereof to the credit of the state library fund.

State v. Court, 24 Mont. 427; 62 Pac. 689. The fee bill of the clerk of the supreme court is found in this section, and there is no provision authorizing him to collect an appearance fee from defendant in special proceedings.

Lime Co. v. Court, 143 Cal. 172; 76

Pac. 973.

Montana Co. v. Boston M. Co., 33 Mont. 405; 84 Pac. 708. The clerk of the supreme court is required to collect in advance fifteen cents per folio for making copies of papers or records.

302. (§ 873.) *Duties.*—It is the duty of the clerk to keep the seal of the supreme court, its records and files, and the roll of attorneys and counsellors at law; to adjourn the court from day to day at the beginning of any term, in the absence of any judge and until the arrival of a majority of their number; to file all papers or transcripts required to be filed by law; to issue writs and certificates and approve bonds or undertakings when so required; to make out all transcripts to the supreme court of the United States; to make copies of papers or records when demanded by law, or the rules of the court, and to perform such other duties as may be required of him by the supreme court.

Montana Co. v. Boston M. Co., 33 Mont. 405; 84 Pac. 708. It is the duty of the clerk of the supreme court to make

copies of papers or records when demanded by law or the rules of the court.

303. (§ 874.) *Settlements, when and how made.*—He is responsible and must account for, and in his settlement with the state auditor must be charged with, the full amount of all fees collected or chargeable, and accruing in causes brought into the court for services rendered therein up to the time of each settlement, which settlement must take place quarterly, and must immediately thereafter pay the amount found due into the treasury. He must also, at the end of each quarter, render to the state auditor, in such form as that officer prescribes, an account in detail under oath, of all fees chargeable and accruing in causes brought into court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over.

304. *Salary of clerk of supreme court.*—"The annual salary of the Clerk of the Supreme Court for all services now required or which may hereafter be devolved upon him by law, is Twenty-five Hundred Dollars." [Act approved March 6, 1907, § 1.] (10th Sess., Chap. 116.)

305. (§ 876.) *Official bond.*—The clerk of the supreme court must execute an official bond in the sum of five thousand dollars.

ARTICLE II.

REPORTER OF THE SUPREME COURT.

Section 306. *Reporter, appointment and salary.*

" 307. *Duties.*

" 308. *Reports of the supreme court.*

" 309. *Contract with publisher.*

" 310. *Title of reports.*

Section 311. Price. Bond of publisher.

“ 312. *Distribution of reports.*

“ 313. *Limitation.*

“ 314. *Justices of supreme court to report decisions.*

“ 315. *Duties of justices.*

“ 316. *Existing contracts not affected.*

306. *Reporter, appointment and salary.*—The Justices of the Supreme Court shall appoint a reporter of their decisions, who shall hold his office and be removable at their pleasure. He shall be an attorney and counsellor-at-law, and shall receive an annual salary of Fifteen Hundred Dollars, payable in the same manner as are the salaries of other state officers. [*Act approved March 4th, 1897.*] (5th Sess. 113.)

This office was abolished by Act approved March 10th, 1899, § 1. (6th Sess. 72.)

307. (§ 891.) *Duties.*—The reporter of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. He shall be entitled to the possession of the original files in all cases for a reasonable time to prepare copies for publication; *Provided*, That such original files shall not be taken from the office of the clerk of the supreme court. The reports of such cases shall contain syllabi of the points decided; a statement of the facts taken from the record, when the same are not fully given in the opinion of the court; the names of counsel, and a reference to such authorities as are cited in the briefs of counsel and have special bearing on the case. And it shall be the further duty of said reporter to prepare a full and comprehensive index and tables of cases reported and cited, to each volume of reports. [*Act approved March 2, 1895.*]

308. (§ 892.) *Reports of the supreme court.*—The reports must be published in volumes of not less than six hundred pages each in the size and style of volume 2, Montana reports, and equal in quality of paper, press work and binding to said volume. [*Act approved March 2, 1895.*]

309. (§ 893.) *Contract with publisher.*—The reporter shall have no pecuniary interest in the volumes of reports, but they must be published by contract to be entered into by the reporter and with the publishing house that will agree to publish the new volumes of Montana reports for a period of ten years, and also to furnish complete sets or add volumes of Montana reports from volume 1 to the last volume published, at prices most advantageous to the state and the people, not exceeding three dollars per volume. Such contract shall require the publisher to print each volume in accordance with the specifications set forth in § 308 [892]. It shall also require the publisher to issue each new volume within ninety days after the manuscript for the same is delivered by the reporter to the said publisher. Such contract shall also require the publisher to make stereotype matrices of each volume so published by him, and to preserve these matrices in fire proof vaults, to the end that the volumes will never be

come out of print. The publisher receiving the contract as herein provided for shall, before commencing the publication of the volumes of such reports, advertise in two newspapers in Montana, for ten days for proposals for such printing, stereotyping and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty per cent. the amount for which the same can be done outside of the state, cause such printing, stereotyping and binding to be done within the state of Montana. [*Act approved March 2, 1895.*]

310. (§ 894.) *Title of reports.*—The title of each volume shall be "Montana Reports," which title, together with the name of the reporter and the number of the volume, shall be printed on the back of each book. [*Act approved March 2, 1895.*]

311. (§ 895.) *Price. Bond of publisher.*—Said contract shall require the publisher to agree to sell three hundred copies of each new volume of said reports to the state of Montana and the price agreed upon in said contract, not exceeding three dollars per volume, and to keep on hand and for sale at the contract price a sufficient number of copies of each volume to supply all demands for ten years from the date of publication thereof. And said publisher shall give bonds for the fulfillment of the terms of this contract in the sum of five thousand dollars, which bond shall be filed with the clerk of the supreme court, and approved by the justices of the supreme court, or a majority thereof. [*Act approved March 2, 1895.*]

312. (§ 896.) *Distribution of reports.*—On the publication of each volume of said reports the secretary of the state shall purchase of said publisher, for the use of the state, three hundred copies thereof and distribute the same in the manner following:

To each state and territory of the United States, one copy; to the library of congress two copies; to each of the judges of the United States circuit and district courts of the States of Idaho, Nevada, California, Washington, Montana, Wyoming and Oregon, one copy; to each state officer, justice of the supreme court, district judge, county attorney and clerk of the district court in this state, one copy; to the reporter of the supreme court, one copy. He shall also distribute said reports to such literary and scientific institutions, publishers and authors as in his opinion may secure an interchange of works which may properly be placed in the state law library. All reports distributed to state, district and other officers in this state shall be for the use of their office and shall be by the person receiving the same turned over to his successor in office, and secretary of the state shall take proper receipts for such reports. [*Act approved March 2, 1895.*]

313. (§ 897.) *Limitation.*—That nothing in this article contained shall be construed to apply to any volume of Montana reports in course of publication at the time of the adoption of this code, but the same shall be paid for as provided for in § 1993,

fifth division of the compiled statutes, and acts amendatory thereof. [*Act approved March 2, 1895.*]

314. *Justices of supreme court to report decisions.*—The persons who may be, and are, Justices of the Supreme Court, shall report the decisions of the Supreme Court. They shall each receive an annual salary of \$1,500, payable in the same manner as are salaries of other State officers, which said salaries shall be in full compensation for the performance of the duties of reporting the decisions of said Court. [*Act approved March 10th, 1899, § 2.*] (6th Sess. 72.)

315. *Duties of justices.*—The persons occupying the positions as aforesaid, shall hereafter perform all the duties heretofore required by law to be performed by the Reporter of the Supreme Court, as provided for by § § 307 (891), 308 (892), 309 (893), 310 (894), 311 (895), 312 (896) and 313 (897), of Article II, Chapter VI, of the Political Code of the State of Montana, relating to the Reporter of the Supreme Court, and by the provisions of an Act to amend an Act entitled an Act to amend Section 890* of the Political Code of the State of Montana, relating to the appointment, qualification and salary of the Reporter of the Supreme Court, approved March 4, 1897. [*Act approved March 10th, 1899, § 3.*] (6th Sess. 72.)

* See Section 306 of this Code.

316. *Existing contract not affected.*—Nothing in this Act contained shall in any manner be construed in any way to affect any contract in existence at the time of the enactment of this law for the publication of the Montana reports, made pursuant to the provisions of Section 309 (893) of the Political Code of the State of Montana. [*Act approved March 10th, 1899, § 4.*] (6th Sess. 72-3.)

ARTICLE III.

NOTARIES PUBLIC.

Section 317. *Governor may appoint.*

" 318. *Restriction as to residence.*

" 319. *Term of office.*

" 320. *General duties.*

" 321. *Protests, evidence of facts stated.*

" 322. *Records of, on death or resignation.*

" 323. *Certified copies of records.*

" 324. *Official bond.*

" 325. *Certificate of filing bond and oath.*

" 326. *Liabilities on official bond.*

" 327. *Authentication of official character.*

" 328. *Fee of county clerk, etc., for filing.*

" 329. *Revocation of commission.*

" 330. *Certain acts made valid.*

" 331. *Limitations.*

" 332. *Acts of notaries validated.*

317. (§ 910.) *Governor may appoint.*—The governor may appoint and commission one or more notaries public for each county in the state.

318. (§ 911.) *Restriction as to residence.*—Every person appointed as notary public must, at the time of his appointment, be a citizen of the state and a resident of the county for which he is appointed, and must continue to reside in such county. Removal from the county vacates his office, and is equivalent to resignation.

319. (§ 912.) *Term of office.*—The term of office of a notary public is three years from and after the date of his commission.

320. (§ 913.) *General duties.*—It is the duty of a notary public:

1. When requested to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by the law of nations and according to commercial usages, or by the laws of any other state, government or country, may be performed by notaries, and keep a record of such acts.

2. To take the acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgment, indorsed or attached to the instrument.

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state.

4. When requested and upon payment of his fees therefor, to make and give a certified copy of any record in his office.

5. To provide and keep an official seal upon which must be engraved the name of his state and county, the words "notarial seal," with the surname of the notary, and at least the initials of his Christian name.

6. To authenticate with his official seal all official acts, except that it is sufficient for any notary, in order to certify on oath or affidavit to be used in this state, in any of the courts, or in any manner whatever, to append his signature to the jurat, and added thereto the words "notary public in for ——— county" (inserting the name of the county), without the impression of his seal. In all cases when a notary signs his name officially he must add to his signature the words required to be added in the case of a jurat. [*Act approved March 15, 1895.*]

Heidt v. Minor, 89 Cal. 118, Subd. 2; 26 Pac. 627.

321. (§ 914.) *Protests, evidence of facts stated.*—The protest of a notary under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment,

stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is *prima facie* evidence of the facts contained therein.

322. (§ 915.) *Records of, on death or resignation.*—It is the duty of every notary public, on his resignation or removal from office, and in case of his death, of his legal representative, or at the expiration of his term to forthwith deposit all the records kept by him, in the office of the county clerk of the county in which he was resident, and on failure to do so, the person so offending is liable to damages to any person injured thereby.

323. (§ 916.) *Certified copies of records.*—It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named, and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

324. *Official bond.*—Each Notary Public must give an official Bond in the sum of \$1000.00, which bond must be approved by the County Clerk of the County for which he was appointed, provided, however, that when such bond is executed by a surety company purporting to be duly authorized to do business in the State of Montana, such approval shall be by the Secretary of State. [Act approved February 28th, 1901.] (7th Sess. 113-114.)

325. (§ 918.) *Certificate of filing bond and oath.*—Each notary public, upon such approval of his official bond, so soon as he has taken his official oath, must transmit such bond and oath, signed by him with his own proper signature, to the office of the secretary of state, whereupon the governor must issue a commission.

326. (§ 919.) *Liabilities on official bond.*—For the official misconduct or neglect of a notary public, he, and the sureties on his official bond, are liable to the parties injured thereby for all damages sustained.

Joost v. Craig, 131 Cal. 506; 63 Pac. 840.

327. (§ 920.) *Authentication of official character.*—Any notary public, under the laws of this state, may file his commission, or a copy thereof, in the office of the county clerk in the county for which he was appointed, and thereafter the county clerk may certify to the official character of such notary public.

328. (§ 921.) *Fee of county clerk, etc., for filing.*—The county clerk may receive for filing the commission of any notary

public the sum of fifty cents, and for each certificate of official character, with seal attached, issued, the further sum of fifty cents.

329. (§ 922.) *Revocation of commission.*—Upon ten days' notice, the governor may revoke the commission of any notary public for any cause he may deem sufficient.

330. (§ 923.) *Certain acts made valid.*—The official acts of every person acting as a notary public within the state of Montana, and heretofore commissioned as such, which acts have been performed since the eighth day of November, A. D. 1889, and up to and including the date of the passage of this act, so far as such acts might be affected, impaired or questioned by reason of change of residence made after appointment, misnomer or misspelling of name or other error made in the appointment or commission of such notary public; neglect to take the prescribed oath of office; the minority of such person, or the expiration of his term of office, are hereby legalized and confirmed, and made effectual and valid. [*Act approved Feby. 15, 1895.*]

331. (§ 924.) *Limitations.*—Nothing in this act contained shall affect any legal action or proceeding now pending. [*Act approved Feby. 15, 1895.*]

332. *Acts of notaries validated.*—The official acts of every person acting as a Notary Public within the State of Montana, heretofore commissioned as such, which acts have been performed since the 15th day of February, 1895, and up to and including the date of the passage of this Act, so far as such Acts might be affected, impaired or questioned by reason of change of residence made after appointment, misnomer or misspelling of name or other error made in the appointment or commission of such Notary, neglect to take the prescribed oath of office, failure of the Notary to place his seal upon any instrument, the minority of such person, or the expiration of his term of office, are hereby legalized and confirmed and made effectual and valid. [*Act February 27, 1907.*] (10th Sess. Chap. 49.)

ARTICLE IV.

COMMISSIONERS OF DEEDS.

Section 333. *Governor to appoint.*

“ 334. *General duties of.*

“ 335. *Effect of acts done by commissioners.*

“ 336. *Oath, when to be filed.*

“ 337. *Fees.*

“ 338. *Copy of this article to be transmitted to appointee.*

“ 339. *Fee to be paid into state treasury.*

333. (§ 940.) *Governor to appoint.*—The Governor may ap-

point in each state of the United States, or in any foreign state, one or more commissioners of deeds, to hold office for the term of five years from and after the date of their commission, but the governor may remove from office any commissioner during the term for which he was appointed.

334. (§ 941) *General duties of.*—Every commissioner of deeds has power, within the state for which he was appointed:

1. To administer and certify oaths.
2. To take and certify depositions and affidavits.
3. To take and certify the acknowledgement of proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record.
4. To provide and keep an official seal, upon which must be engraved his name, the words "Commissioner of Deeds for the State of Montana," and the name of the state for which he is commissioned.

5. To authenticate with his official seal all his official acts.

335. (§ 942.) *Effect of acts done by commissioners.*—All oaths administered, depositions and affidavits taken, and all acknowledgments and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts.

336. (§ 943.) *Oaths, when to be filed.*—The official oaths of commissioners of deeds, together with the impressions of their official seals, must be filed in the office of the secretary of state within six months after they are taken.

337. (§ 944.) *Fees.*—The fees of commissioners of deeds are the same as those prescribed for notaries public.

338. (§ 945.) *Copy of this article to be transmitted to appointee.*—The secretary of state must transmit, with the commission to the appointee, a certified copy of this article, and of the section prescribing the fees of notaries public.

339. (§ 946.) *Fee to be paid into state treasury.*—No commission must issue until the applicant pays into the state treasury the sum of five dollars.

ARTICLE V.

OTHER OFFICERS.

Section 340. Clerks, sheriffs, coroners, and other county officers, etc.

" 341. *Attorneys and counselors at law.*

340. (§ 950.) *Clerks, sheriffs, coroners, and other county officers, etc.*—The mode of election of clerks, sheriffs, coroners, and other county and township officers, is fixed in part IV., of this code.

341. (§ 951.) *Attorneys and counselors at law.*—The admission of attorneys and counselors at law is provided for and their duties fixed in chapter I., title V., part I., of the Code of Civil Procedure.

CHAPTER VII.

GENERAL PROVISIONS RELATING TO DIFFERENT CLASSES OF OFFICERS.

- ARTICLE I. DISQUALIFICATIONS.
- II. RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.
- III. POWERS OF DEPUTIES.
- IV. APPOINTMENT AND DURATION OF TERM.
- V. NOMINATIONS AND COMMISSIONS.
- VI. OATH OF OFFICE.
- VII. PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.
- VIII. SALARIES WHEN TITLE IS CONTESTED.
- IX. BONDS OF OFFICERS.
- X. RESIGNATIONS, VACANCIES AND THE MODE OF SUPPLYING THEM.
- XI. PROCEEDINGS TO COMPEL DELIVERY OF BOOKS AND PAPERS.
- XII. MISCELLANEOUS PROVISIONS.

ARTICLE I.

DISQUALIFICATIONS.

- Section 342. *Age and citizenship.*
- “ 343. *Other disqualifications.*
- “ 344. *County officer not to act as deputy.*

342. (§ 960.) *Age and citizenship.*—No person is capable of holding a civil office in this state, who at the time of his election or appointment is not of the age of twenty-one years and a citizen of this state.

Ward v. Crowell, 142 Cal. 588; 76 Pac. 491.

343. (§ 961.) *Other disqualifications.*—Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the codes concerning the various offices.

344. (§ 962.) *County officers not to act as deputy.*—No county officer must be appointed or act as the deputy of another officer of the same county, except in cases where the pay of the officer so appointed amounts to a sum less than seventy-five dollars per month.

ARTICLE II.

RESTRICTIONS UPON THE RESIDENCE OF OFFICERS.

Section 345. Certain officers must reside at the seat of government.

“ 346. *Absence from the state.*

“ 347. *Restrictions upon judicial officers.*

“ 348. *Restrictions upon county officers.*

“ 349. *Restrictions upon other officers.*

345. (§ 970.) *Certain officers must reside at the seat of government.*—The following officers must reside and keep their offices at the seat of government: The governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction, justices of the supreme court and clerk of the supreme court.

346. (§ 971.) *Absence from the state.*—No officer mentioned in the preceding section, and no officer appointed by the governor and confirmed by the senate, must absent himself from the state for more than sixty consecutive days, unless upon business of the state or with the consent of the legislative assembly.

347. (§ 972.) *Restrictions upon judicial officers.*—Restrictions upon the residence of other judicial officers are contained in the Constitution and the Code of Civil Procedure.

348. (§ 973.) *Restrictions upon county officers.*—Restrictions upon the residence of county officers are contained in part IV., of this code.

349. (§ 974.) *Restrictions upon other officers.*—Restrictions upon the residence of other officers are contained in the article relating to the respective officers.

ARTICLE III.

POWERS OF DEPUTIES.

350. (§ 980.) In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of his principal.

Rauer v. Lowe, 107 Cal. 232; 40 Pac. 337.

ARTICLE IV.

APPOINTMENT AND DURATION OF TERMS.

Section 351. Appointments, when not otherwise provided for.

“ 352. *Deputies and subordinate officers.*

“ 353. *Number of deputies.*

“ 354. *Term of office, when not prescribed.*

“ 355. *Holding over until successor is qualified.*

351. (§ 990.) *Appointments, when not otherwise provided for.*—Every officer, the mode of whose appointment is not pre-

scribed by the constitution or statutes, must be appointed by the governor by and with the advice and consent of the senate.

352. (§ 991.) *Deputies and subordinate officers.*—All assistants, deputies, and other subordinate officers, whose appointments are not otherwise provided for, must be appointed by the officer or body to whom they are respectively subordinate.

Jobb v. Meagher Co., 20 Mont. 428; 51 Pac. 1035.

353. (§ 992.) *Number of deputies.*—When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

Jobb v. Meagher Co., 20 Mont. 428; 51 Pac. 1035.

354. (§ 993.) *Term of office, when not prescribed.*—Every office of which the duration is not fixed by law, is held at the pleasure of the appointing power.

Kenyon v. W. U. T. Co., 100 Cal. 458; 35 Pac. 75.

355. (§ 994.) *Holding over until successor is qualified.*—Every officer must continue to discharge the duties of his office, although his term has expired, until his successor has qualified.

State v. Page, 20 Mont. 244; 50 Pac. 721. This provision is usually found in the codes of the states and is based upon the requirements of public policy, which demands that if, from any cause, the new incumbent of an office fails to qualify, or if there has not been an election

of any person, there should not be a vacancy in the office and a suspension of the public business. This section does not apply to a vacancy caused by resignation.

People v. Campbell, 138 Cal. 15; 70 Pac. 918.

ARTICLE V.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

Section 356. Nominations to senate must be in writing.

“ 357. *Resolution of concurrence.*

“ 358. *Commissions by the governor.*

“ 359. *Form of commissions.*

“ 360. *Other commissions.*

“ 361. *Appointment of deputies, etc., how made.*

356. (§ 1000.) *Nominations to senate must be in writing.*—Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

357. (§ 1001.) *Resolution of concurrence.*—Whenever the senate concurs in a nomination its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state, and another copy, certified by the secretary, to the governor.

358. (§ 1002.) *Commissions by the governor.*—The governor must commission:

1. All officers elected by the people, whose commissions are not otherwise provided for.

2. All officers of the militia.

3. All officers appointed by the governor, or by the governor with consent of the senate.

4. United States senators.

State v. Page, 20 Mont. 245; 50 Pac. 722. The state land agent should be commissioned by the governor. The refusal of the secretary of state to countersign the commission cannot affect the

validity of the appointment by the governor.

Wilson v. Fischer, 148 Cal. 16; 82 Pac. 421.

359. (§ 1003.) *Form of commissions.*—The commissions of all officers commissioned by the governor must be issued in the name of the state, and must be signed by the governor and attested by the secretary of state, under the great seal.

State v. Page, 20 Mont. 238; 50 Pac. 719.

360. (§ 1004.) *Other commissions.*—The commissions of all other officers, where no special provision is made by law, must be signed by the presiding officer of the body, or by the person making the appointment.

Bledsoe v. Colgan, 138 Cal. 36; 70 Pac. 924.

361. (§ 1005.) *Appointment of deputies, etc., how made.*—The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing filed in the office of the appointing power or the office of its clerk.

ARTICLE VI.

OATH OF OFFICE.

Section 362. *Oath, form of.*

“ 363. *Oath of the members of the legislature.*

“ 364. *Time of filing oath.*

“ 365. *Oath, before whom taken.*

“ 366. *Oath, where filed.*

“ 367. *Oath of deputies.*

362. (§ 1010.) *Oath, form of.*—Members of the legislative assembly and all officers, executive, ministerial or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation, to-wit: “I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States and the constitution of the State of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law. So help me God.”

And no other oath, declaration, or test must be required as a qualification for any office or trust.

363. (§ 1011.) *Oath of the members of the legislature.*—Members of the legislative assembly may take the oath of office at any time during the term for which they were elected.

364. *Time of filing oath.*—Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within thirty days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given. [Act approved January 30, 1907.] (10th Sess. Chap. 1.)

365. (§ 1013.) *Oath, before whom taken.*—Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

366. (§ 1014.) *Oath, where filed.*—Every oath of office certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

1. The oath of all officers, whose authority is not limited to any particular county, in the office of the secretary of state.

2. The oath of all officers, elected or appointed for any county, and of all officers whose duties are local, or whose residence in any particular county, is prescribed by law, and of the clerks of the district courts, in the offices of the clerks of the respective counties.

3. Each judge of a district court must, so soon as he has taken and subscribed his official oath, file a duplicate copy thereof, signed with his signature, in the office of the secretary of state.

People v. Perry, 79 Cal. 109; 21 Pac 423.

367. (§ 1015.) *Oath of deputies.*—Deputies, clerks and subordinate officers must, within ten days after receiving notice of their appointment, take and file an oath in the manner required of their principals.

Rauer v. Lowe, 107 Cal. 233; 40 Pac. 337.

ARTICLE VII.

PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.

Section 368. *Certain officers not to be interested in contracts.*

“ 369. *Nor purchasers or vendors at certain sales.*

“ 370. *Contracts in violation, voidable.*

“ 371. *Certain officers prohibited from dealing in scrip etc.*

“ 372. *Auditing officers, duties of.*

“ 373. *Treasurer, duties of.*

“ 374. *When settlements must be withheld.*

368. (§ 1020.) *Certain officers not to be interested in contracts.*—Members of the legislative assembly, state, county, city, town, or township officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Berka v. Woodward, 125 Cal. 122; 57 Pac. 777.

369. (§ 1021.) *Nor purchasers or vendors at certain sales.*—State, County, town, township and city officers must not be purchasers at any sale, nor vendors at any purchase made by them, in their official capacity.

370. (§ 1022.) *Contracts in violation, voidable.*—Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

371. (§ 1023.) *Certain officers prohibited from dealing in scrip, etc.*—The state officers, the several county, city, town and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, or to the use or benefit of any person or persons whatever, any state, county or city warrants, scrip orders, demands, claims, or other evidences of indebtedness against the state, or any county, city, town, or township thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

State v. Danzer, 35 Mont. 272; 88 Pac. 953.

372. (§ 1024.) *Auditing officers, duties of.*—Every officer whose duty it is to audit and allow the accounts of other state, county, city, township or town officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this article.

373. (§ 1025.) *Treasurer, duties of.*—Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township, when the same has been purchased, sold, received or transferred contrary to any of the provisions of this article.

374. (§ 1026.) *When settlements must be withheld.*—Every officer charged with the disbursement of public moneys who is informed by affidavit establishing probable cause that any officer whose account is about to be settled, audited or paid by him, has violated any of the provisions of this article, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation by the county attorney of the county. In case there be judgment for the defendant upon such prosecution,

the proper officer may proceed to settle, audit or pay such account, as if no such affidavit had been filed.

ARTICLE VIII.

SALARIES OF OFFICERS WHEN TITLE IS CONTESTED.

Section 375. Title contested, salary must not be paid.

“ 376. *Pendency of suit must be certified by the clerk.*

375. (§ 1040.) *Title contested, salary must not be paid.*—When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined.

Wilson v. Fisher, 148 Cal. 17; 82 Pac. 421.

376. (§ 1041.) *Pendency of suit must be certified by the clerk.*—As soon as such proceedings are instituted, the clerk of the court, in which they are pending, must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

ARTICLE IX.

BONDS OF OFFICERS.

Section 377. Time for filing bond.

“ 378. *Approving, filing, etc., of state officers.*

“ 379. *Bonds of secretary of state, where filed.*

“ 380. *Approval of bonds of county and township officers.*

“ 381. *Record of official bond.*

“ 382. *Approval must be endorsed on bond.*

“ 383. *Bond not to be filed before approval.*

“ 384. *Condition of bond.*

“ 385. *Qualification of sureties.*

“ 386. *When sureties liable for less than full amount.*

“ 387. *Custody of official bonds.*

“ 388. *Forms of bonds.*

“ 389. *Construction of bonds.*

“ 390. *Same.*

“ 391. *Suit on bonds.*

“ 392. *Same.*

“ 393. *Defects in form, approval, filing, etc., not to vitiate.*

“ 394. *Defective official bond.*

“ 395. *Insufficiency of sureties.*

“ 396. *Form of additional bond.*

“ 397. *Force of original bond.*

“ 398. *Liability of officers and sureties.*

“ 399. *Separate judgments on bonds.*

- Section 400. Contribution between sureties.*
 “ 401. *Discharge of sureties.*
 “ 402. *Persons appointed to fill vacancies, bonds of.*
 “ 403. *Release of sureties.*
 “ 404. *Same.*
 “ 405. *Same.*
 “ 406. *Office declared vacant for want of official bond.*
 “ 407. *Supplemental bond.*
 “ 408. *Same.*
 “ 409. *Same.*
 “ 410. *Same.*
 “ 411. *Effect of discharge of sureties.*
 “ 412. *To what bonds applicable.*
 “ 413. *Bonds of receivers, assignees, etc.*
 “ 414. *Actions on official bonds, effect of.*
 “ 415. *Same.*
 “ 416. *Bonds of deputies, clerks, etc.*
 “ 417. *Bond of county clerk, where filed.*
 “ 418. *Actions to compel specific performance, etc.*

377. (§ 1050.) *Time for filing bond.*—Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

Philipsburg v. Degenhart, 30 Mont. 302; 76 Pac. 695. This and other sessions of this Article of the Political Code, include the official bonds of city treasurers.

378. (§ 1051.) *Approving, filing, etc., of state officers.*—Unless otherwise prescribed by statute, the official bonds of state officers must be approved by the governor and filed and recorded in the office of the secretary of state.

379. (§ 1052.) *Bonds of secretary of state, where filed.*—The official bond of the secretary of state must, after it is recorded, be filed in the office of the state treasurer.

380. *Approval of bonds of county and township officers.*—Unless otherwise prescribed by statute the official bonds of county, township, and school district officers, must be approved by the judge of the district court, and filed and recorded in the office of the county recorder. [Act approved March 7th, 1899, § 1.] (6th Sess. 79.)

381. (§ 1054.) *Record of official bond.*—Official bonds must be recorded in a book kept for the purpose, and entitled “Record of Official Bonds.”

382. (§ 1055.) *Approval must be indorsed on bond.*—The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

383. *Bond not to be filed before approval.*—No officer with whom any official bond is required to be filed must file such bond until approved.

384. *Conditions of bond.*—The condition of every official bond must be that the principal shall well, truly and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the State subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all moneys or other property that may come into his hands as such officer. The principal and sureties upon any official bond are also in all cases liable for the neglect, default or misconduct, in office of any deputy, clerk or employe, appointed or employed by such principal.

All official bonds must be signed and executed by the principal and two or more sureties, or by the principal, and one or more surety companies organized as such under the laws of this State, or licensed to do business herein. [*Act approved March 7th, 1899, § 2.*] (6th Sess. 79-80.)

Philipsburg v. Degenhart, 30 Mont. 302; 76 Pac. 695. a city treasurer must be conditioned in accordance with this section.

385. *Qualifications of sureties.*—The individual sureties on all official bonds must justify before an officer authorized to administer oaths by an affidavit, to the effect that they are residents and householders or free holders within the State of Montana, and that each is worth the sum for which he becomes surety in said bond over and above his just debts and liabilities, exclusive of property exempt from execution. No surety company or corporation organized under or that has complied with the laws of this State, and has been duly licensed to do business as such herein, shall be required to justify as a surety, and no such company or corporation shall be accepted, as a surety in any case when its liabilities exceed its assets, as ascertained in the manner provided by law.

No member of the Board of County Commissioners, can be accepted as a surety upon the official bond of any county, township or school district officer in his county; nor must any county officer become a surety upon the official bond of any other county officer. [*Act approved March 7th, 1899, § 3.*] (6th Sess. 80.)

386. *When sureties liable for less than full amount.*—When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions not less than five hundred dollars thereof, making in the aggregate a liability of double the amount named as the penal sum of the bond. And if any such bond becomes forfeited, an action may be brought thereon against any or all of the obligors and judgment entered against them either jointly or severally, as they may be liable. The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is

liable to contribute to his co-sureties in proportion to the amount for which he is liable. [*Act approved March 7th, 1899, § 4.*] (6th Sess. 80.)

387. (§ 1060.) *Custody of official bonds.*—Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

388. (§ 1061.) *Forms of bonds.*—All official bonds must be in form joint and several, and made payable to the state of Montana in such penalty and with such conditions as required by this chapter, or the law creating or regulating the duties of the office.

389. (§ 1062.) *Construction of bonds.*—Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy or clerk.

390. (§ 1063.) *Same.*—Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

391. (§ 1064.) *Suit on bonds.*—Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the state of Montana, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity; and any person so injured or aggrieved may bring suit on such bond in his own name, without an assignment thereof.

392. (§ 1065.) *Same.*—No such bond is void on the first recovery of a judgment thereon; but suit may be afterwards brought from time to time, and judgment recovered thereon by the state of Montana, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

393. *Defects in form, approval, filing, etc., not to vitiate.*—Whenever an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and sureties; but they are equitably bound to the state or party interested; and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable de-

mand or damages from such officer and the persons who intended to become and were included as sureties in such bond.

394. *Defective official bonds.*—No Official Bond entered into by any officer, nor any Bond, recognizance, or written undertaking taken by any officer in the discharge of the duties of his office, shall be void for want of form or substance or recital or condition, nor the principal or surety be discharged, but the principal and surety shall be bound by such bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the same, and the sureties to the amount specified in the bond or recognizance or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in his complaint and recover to the same extent as if such bond, recognizance, or written undertaking were perfect in all respects. [Act approved March 9, 1907.] (10th Sess. Chap. 193.)

395. *Insufficiency of sureties.*—Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the court, judge, board, person or body whose duty it is to approve the official bond of any officer, that the sureties on any bond given pursuant to the provisions of this article as amended by this Act, or any one of them have since such bond was approved died, removed from the State, become insolvent, or from any other cause have become incompetent or insufficient sureties on such bond, the court, judge, board, officer or other person may issue a citation to such officer, requiring him on a day therein named, not less than five nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the court, judge, board, officer, or other person must make an order vacating the office, and the same must be filed as provided by law. [Act approved March 7th, 1899, § 5.] (6th Sess. 81.)

396. (§ 1068.) *Form of additional bond.*—The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions, as are prescribed respecting the original bonds of officers.

397. (§ 1069.) *Force of original bond.*—In no case is the original bond discharged or affected when an additional bond has

been given, but the same remains of like force and obligation as if such additional bond had not been given.

398. (§ 1070.) *Liability of officers and sureties.*—The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit.

399. (§ 1071.) *Separate judgments on bonds.*—If separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively; but he must only collect by execution, or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

400. (§ 1072.) *Contribution between sureties.*—Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction, of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid respectively.

Hewlett v. Beede, 2 Cal. App. 564; 83 Pac. 1086.

401. *Discharge of sureties.*—Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done, if such officer will execute a new bond in accordance with the provisions of this Article as amended by this Act, in like form, penalty and conditions and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability; but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the principal and sureties of the original bond. [Act approved March 7th, 1899, § 6.] (6th Sess. 81.)

402. (§ 1074.) *Persons appointed to fill vacancies, bonds of.*—Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

403. (§ 1075.) *Release of sureties.*—Any surety on the official bond of a city, town, township, county or state officer, may be relieved from liabilities thereon afterwards accruing, by complying with the provisions of the three sections following.

Philipsburg v. Degenhart, 30 Mont. 302; 76 Pac. 695. It is apparent from this section that Article IX, Political Code, includes the official bonds of city treasurers.

404. (§ 1076.) *Same.*—Such surety must file with the judge, court, board, officer, or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reason therefor; which statement must be subscribed and verified by the affidavit of the party filing the same.

405. (§ 1077.) *Same.*—A copy of the statement must be served on the officer named in such official bond, and due return or affidavit of service made thereon as in other cases.

406. (§ 1078.) *Office declared vacant for want of official bond.*—In ten days after the service of such notice, the judge, court, board, officer, or other person with whom the same is filed must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

407. (§ 1079.) *Supplemental bond.*—Whenever, from any cause, a surety on the official bond of any officer elected or appointed under the laws of this state withdraws from his bond or becomes insolvent or from other cause becomes incompetent to remain as surety thereon, such officer may file a supplemental bond, executed and approved in the same manner as the original bond, for the amount for which the surety so withdrawing or incompetent was bound by the original bond.

408. (§ 1080.) *Same.*—The release, discharge, voluntary withdrawal or incompetency of a surety on any official bond, does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

People v. Otto, 77 Cal. 49; 18 Pac. 869.

409. (§ 1081.) *Same.*—Whenever a surety on any official bond gives notice of an intention to withdraw therefrom, or is removed, or becomes otherwise incompetent, the principal on the bond must, within ten days after such notice or disqualification, execute and file, subject to the same conditions as the original, a supplemental bond, wherein must be recited the names of the remaining original sureties and of the new surety or sureties, and the respective amounts for which he, or they, become bound, who are substituted in lieu of the surety, or sureties, released or disqualified.

410. (§ 1082.) *Same.*—Whenever the original bond is given for an amount in excess of the sum required by law, if the with-

drawal or removal of any surety does not reduce the bond below the amount required by law to be secured by sureties, then no supplemental or additional bond is required or necessary; and whenever any supplemental bond is so filed and approved, the officer with whom the bond is filed, or in whose office the same is recorded, must give ten days' notice—by publication in some paper published in the county, or if there is no paper in the county, then in the county nearest thereto in which a newspaper is published, and in case of a bond of a state officer, in some paper at the seat of government, of the fact of the filing of the bond and the name of the party withdrawing from the former and the substitute on the new bond; and until the filing and approval of the supplemental bond the sureties on the former bond are liable for all the acts of their principal.

411. (§ 1083.) *Effect of discharge of sureties.*—No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order mentioned in § 406 (1078), but such legal proceedings may be had therefor in all respects as though no such order had been made.

412. *To what bonds applicable.*—The provisions of this Article, as the same shall be in force after amendment by this Act, shall apply to all official bonds, and to the bonds and undertakings of receivers, executors, administrators and guardians, and to bonds and undertakings given in injunction proceedings, and to all bonds and undertakings required by law to be given and approved by any court, judge, board, person or body, and, except as to requirements of such approval, the provisions shall apply to all bonds given or required by law to be given in attachment proceedings, criminal actions or proceedings, bail bonds, appeal bonds, and all bonds given or required to be given in any legal proceedings or action in any court of this State. [*Act approved March 7th, 1899, § 7.*] (6th Sess. 81-2.)

413. (§ 1085.) *Bonds of receivers, assignees, etc.*—All bonds or undertakings given by trustees, receivers, assignees, or officers of a court, in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state of Montana, and upon the order of the court where such action or proceeding is pending may be prosecuted for the benefit of any and all interested therein.

414. (§ 1086.) *Actions on official bonds, effect of.*—When an action is commenced in any court in this state, for the benefit of the state, to enforce the penalty of, or to recover money upon an official bond or obligation, or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced, an affidavit,

stating either positively or on information and belief, that such bond or obligation was executed by the defendant, or one or more of the defendants (designating whom), and made payable to the people of the state or to the state of Montana, and that the defendant or defendants have real estate or some interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state, and thereupon the clerk of the court receiving such affidavit must certify to the county clerk in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, with the date of the commencement of the suit.

415. (§ 1087.) *Same.*—Upon receiving such certificate, the county clerk must indorse upon it the time of its reception, and such certificate must be filed in the same manner as notices of the pendency of action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed, belonging to the defendant, or to one or more of such defendants, for the amount the owner thereof is or may be liable upon the judgment, from the filing of this certificate.

416. (§ 1088.) *Bonds of deputies, clerks, etc.*—Every officer or body appointing a deputy, clerk or subordinate officer, may require an official bond to be given by the person appointed, and may fix the amount thereof.

417. (§ 1089.) *Bond of county clerk, where filed.*—The official bond of the county clerk must, after being recorded, be filed in the office of the county treasurer, and the safe keeping of the same is hereby made the duty of the county treasurer.

418. (§ 1090.) *Actions to compel specific performance, etc.*—In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate mentioned in § 418 (1087), which agreement was made prior to the filing of such certificate, but the purchase price thereof is not due until after the filing of said certificate, the judge of the district court in which said action for specific performance is tried, must, if the purchaser is otherwise entitled to specific performance of such agreement, order the said purchaser to pay the purchase price, or so much thereof as may be due, to the state treasurer, taking his receipt therefor. Upon such payment the purchaser is entitled to enforce the specific performance of the agreement, and take said real estate free from the liens created from the filing of said certificate. The moneys so paid to the state treasurer must be held by him, pending the litigation mentioned in said certificate, and subject to the lien created by the filing of said certificate. If judgment is recovered against the defendant the state treasurer in his settlement must pay to

the county treasurer entitled to the same, the amount due the county.

ARTICLE X.

RESIGNATIONS, VACANCIES, AND THE MODE OF SUPPLYING THEM.

Section 419. Resignation, to whom made.

“ 420. *Vacancies, how they occur.*

“ 421. *Notice of removal, by and to whom given.*

“ 422. *Vacancies in legislative assembly, how filled.*

“ 423. *Vacancies, how filled when not otherwise provided for.*

“ 424. *Vacancies occurring during recess of the legislative assembly.*

“ 425. *Vacancies in certain state offices, how filled.*

“ 426. *Powers and duties of officer filling unexpired term.*

419. (§ 1100.) *Resignations, to whom made.*—Resignations must be in writing and made as follows:

1. By the governor and lieutenant-governor, to the legislative assembly, if it is in session; and if not, then to the secretary of state.

2. By all officers commissioned by the governor, to the governor.

3. By senators and members of the house of representatives, if the legislative assembly is not in session, to the governor; if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the governor.

4. By all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties.

5. By all other appointed officers, to the body or officer that appointed them.

6. His absence from the state, without the permission of the legislative assembly, beyond the period allowed by law.

People v. Budd, 114 Cal. 172; 45 Pac. 1060.

State v. Page, 20 Mont. 244; 50 Pac. 721. When a vacancy occurs in the office of state land agent, the governor,

without the consent of the board of state land commissioners, may fill it by appointment by granting a commission to expire at the end of the next legislative assembly.

420. (§ 1101.) *Vacancies, how they occur.*—An office becomes vacant on the happening of either of the following events before the expiration of the term:

1. The death of the incumbent.

2. His insanity, found upon a commission of lunacy issued to determine the fact.

3. His resignation.

4. His removal from office.

5. His ceasing to be a resident of the state, or if the office be local, of the district, city, county, town or township, for which he was chosen or appointed or within which the duties of his office are required to be discharged.

6. His absence from the state, without the permission of the legislative assembly, beyond the period allowed by law.

7. His ceasing to discharge the duty of his office for the period of three consecutive months, except when prevented by sickness, or when absent from the state by permission of the legislative assembly.

8. His conviction of a felony, or of any offense involving moral turpitude, or a violation of his official duties.

9. His refusal or neglect to file his official oath or bond within the time prescribed.

10. The decision of a competent tribunal declaring void his election or appointment.

State v. Page, 20 Mont. 243; 50 Pac. 721. The state land agent tendered his resignation to the governor to be effective at the discretion of the governor. The governor in writing accepted the resignation to take effect on a certain date, and on that date the incumbent ceased to be state land agent without any action by the state board of land commissioners.

In re Craigie's Estate, 24 Mont. 42; 60 Pac. 496.

State v. Acton, 31 Mont. 39; 77 Pac.

300. An office becomes vacant on the happening of certain events enumerated in this section, and this enumeration is exclusive. The contingency of a tie vote is not provided for, and when the two candidates for the office of county superintendent of schools received an equal number of votes, there was no vacancy, and the previous incumbent was entitled to hold the office until a successor was regularly elected.

Adams v. Doyle, 139 Cal. 681; 73 Pac. 582.

421. (§ 1102.) *Notice of removal, by and to whom given.*—Whenever an officer is removed, declared insane, or convicted of a felony, or offense involving moral turpitude, or a violation of his official duty, or whenever his election or appointment is declared void, the body, judge or officer before whom the proceedings were had, must give notice thereof to the officer authorized to fill the vacancy.

422. (§ 1103.) *Vacancies in legislative assembly, how filled.*—Whenever a vacancy, or failure to elect by reason of a tie vote occurs in either house of the legislative assembly, the governor must at once issue a writ of election to fill such vacancy.

423. (§ 1104.) *Vacancies, how filled when not otherwise provided for.*—When any office becomes vacant, and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by granting a commission to expire at the end of the next legislative assembly or at the next election by the people.

State v. Page, 20 Mont. 244; 50 Pac. 721. This section applies to all cases of vacancies where no mode is provided by law for filling the same. While the consent of the board of land commissioners to an appointment by the governor is necessary where a person is ap-

pointed to succeed one whose term has expired, the governor alone must appoint, where a vacancy is to be filled in the office of state land agent, by granting a commission until the end of the next session of the legislature.

424. (§ 1105.) *Vacancies occurring during recess of the legislative assembly.*—Vacancies occurring in office during the recess

of the legislative assembly, the appointment to which is vested in the governor and senate, or in the legislative assembly, must be filled by appointment made by the governor; but the person so appointed can only hold the office until the adjournment of the next session of the legislative assembly.

State v. Page, 20 Mont. 245; 50 Pac. 721. People v. Tyrell, 87 Cal. 478; 25 Pac. 684.

425 (§ 1106.) *Vacancies in certain state offices, how filled.*—A vacancy in the office of either the secretary of state, state auditor, state treasurer, attorney general, clerk of the supreme court, or superintendent of public instruction, must be filled by a person appointed by the governor, who holds his office until the first Monday in January next after a general election. At such election the office must be filled by election for the unexpired term.

426. (§ 1107.) *Powers and duties of officer filling unexpired term.*—Any person elected or appointed to fill a vacancy, after filing his official oath and bond, possesses all the rights and powers, and is subject to all the liabilities, duties, and obligations, as if he had been elected to the office for a full term.

Larew v. Newman, 81 Cal. 590; 23 Pac. 227.

ARTICLE XI.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY OFFICERS TO THEIR SUCCESSORS.

Section 427. Possession of books and papers.

“ 428. *Proceedings to compel delivery of.*

“ 429. *Attachment and warrant to enforce.*

427. (§ 1120.) *Possession of books and papers.*—Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent, by virtue of his office.

428. (§ 1121.) *Proceedings to compel delivery of.*—If any, person, whether a former incumbent, or another person, refuse or neglect to deliver to the actual incumbent, any such books or papers, such actual incumbent may apply, by complaint to any district court, or judge of the county where the person so refusing or neglecting resides, and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties, and to order any such books and papers to be delivered to the petitioners.

429. (§ 1122.) *Attachment and warrant to enforce.*—The execution of the order, and delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the plaintiff.

ARTICLE XII.

MISCELLANEOUS PROVISIONS.

- Section 430. *Great seal.*
 “ 431. *Seals of executive officers.*
 “ 432. *State flag.*
 “ 433. *Design of state flag.*
 “ 434. *Executive and judicial officers may administer oaths.*
 “ 435. *Salaries payable quarterly.*
 “ 436. *Office hours.*
 “ 437. *Signature of officer acting ex-officio.*
 “ 438. *Records open to public inspection. Exceptions.*
 “ 439. *Itemized account.*
 “ 440. *Traveling expenses.*
 “ 441. *Vouchers presented to state board of examiners.*
 “ 442. *Penalty for collecting expenses not due.*

430. (§ 1130.) *Great seal.*—The great seal of the state is as follows: A central group representing a plow, a miner's pick and shovel; upon the right representation of the Great Falls of the Missouri river; upon the left mountain scenery, and underneath the words “Oro-y-Plata.” The seal must be two and one-half inches in diameter, and surrounded by these words, “The Great Seal of the State of Montana.”

431. (§ 1131.) *Seals of executive officers.*—Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal, and must be two inches in diameter surrounded by the words, “State of Montana” (giving the title of the office, “Secretary of State,” “State Treasurer,” etc.). An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

432. *State flag.*—There is hereby established a “State Flag of Montana.” [Act approved February 27, 1905, § 1.] (9th Sess. Chap. 42.)

433. *Design of state flag.*—The “State flag of Montana” shall be a flag having a blue field, with a representation of the Great Seal of the State in the center, and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the First Montana Infantry, U. S. V., in the Spanish American War with the exception of the device, “1st Montana Infantry, U. S. V.” [Act approved February 27, 1905, § 2.] (9th Sess. Chap. 42.)

434. (§ 1132.) *Executive and judicial officers may administer oaths.*—Every executive, state and judicial officer may administer and certify oaths.

Haile v. Smith, 128 Cal. 420; 60 Pac. 1032.

435. *Salaries payable quarterly.*—Unless otherwise provided by law the salaries of officers must be paid out of the General

fund in the State Treasury, quarterly, on the last day of the quarter, except that the salaries of Judges of the District Courts shall be paid monthly, on the last day of the month. [*Act approved March 9th, 1901.*] (7th Sess. 114.)

436. (§ 1134.) *Office hours.*—Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from nine o'clock a. m. until five o'clock p. m. each day, and at other times when the accommodation of the public or the proper transaction of business requires, except upon holidays.

437. (§ 1135.) *Signature of officer acting ex-officio.*—When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation, except as otherwise provided by law, must be in the name of the office the duties of which he discharges.

438. (§ 1136.) *Records open to public inspection. Exceptions.*—The public records and other matters in the office of any officer are at all times, during office hours, open to the inspection of any person. In cases of attachment, the clerk of the court with whom the complaint is filed must not make public the fact of the filing of the complaint, or the issuing of such attachment, until after the filing of return of service of attachment.

Whelan v. Court, 114 Cal. 549; 46 Pac. 468.

439. (§ 1137.) *Itemized accounts.*—All state officers and appointees must produce itemized accounts for all moneys, other than salaries, expended by them, accompanied by affidavit that the money has been expended.

440. *Traveling expenses.*—Each State Officer shall be allowed his necessary office and his actual and necessary traveling expenses, when performing the duties pertaining to his office. No such officer shall be allowed as expenses, a larger amount than has been actually and necessarily incurred or paid out by him. Each officer shall be required to travel by the shortest practicable route, and in cases when same can be done, shall be required to use mileage books or other means of reduced transportation. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 102.)

441. *Vouchers presented to state board of examiners.*—Each officer shall be required to make out and file with the State Board of Examiners, an itemized and verified account with proper vouchers thereto attached, of his expenses and same shall be passed upon and allowed by such Board before being paid. [*Act approved March 4th, 1897, § 2.*] (5th Sess. 102.)

442. *Penalty for collecting expenses not due.*—Any such officer who shall knowingly collect or receive as expenses a greater sum than has actually and necessarily been paid out or incurred by him, shall be guilty of a misdemeanor, and shall upon conviction

thereof be fined in any sum not less than Two Hundred and fifty dollars nor more than one thousand dollars, and it is hereby made the duty of the Attorney General to prosecute any violation of the provisions of this Act. [Act approved March 4th, 1897, § 3.] (5th Sess. 102.)

ARTICLE XII.

PUBLIC REPORTS.

Section 443. *When state officers, etc., are to report.*

“ 444. *Reports published biennially.*

“ 445. *Distribution of public reports.*

“ 446. *Semi-annual reports.*

“ 447. *Semi-annual reports of property on hand.*

“ 448. *Secretary of state to provide blanks.*

“ 449. *Penalty.*

443. (§ 310.) *When state officers, etc., are to report.*—All officers, boards of officers, commissioners, trustees and directors required by law to make reports to the governor or legislative assembly, must send such reports to the governor before the first Monday of November, in the year eighteen hundred and ninety-two, and every second year thereafter.

444. *Reports published biennially.*—No report of State officers or boards shall hereafter be printed or published oftener than once in two years which shall be in the month of December prior to the convening of the regular session of the Legislature, except by the order of the State Board of Examiners, and the number of copies of each report to be printed shall be determined by the State Board of Examiners. [Act approved March 7th, 1899, § 1.] (6th Sess. 94.)

445. *Distribution of public reports.*—The reports must be delivered by the secretary of state as follows: To the governor, twenty-five copies of each report; to the librarian of the Historical and Miscellaneous Department of the State Library, at least one hundred and fifty copies of each report; to the secretary of state, twenty-five copies of each report; to the superintendent of public instruction, two hundred and fifty copies of his report for distribution to school trustees and teachers and for exchange with other states; to the state board of land commissioners, two hundred copies of their report for distribution to the county surveyors, assessors, county clerks for several counties, and for exchange with other states; to the state auditor, one hundred and fifty copies of his report; to the secretary of state one hundred copies of his report; to the librarian of the Historical and Miscellaneous Department of the State Library, four hundred copies of his report; to the librarian of the Law Department of the State Library, fifty copies of his report; to the officers of the state board of commissioners for the insane, deaf, dumb, and blind asylum,

fifty copies of their report; to the state board of education, one hundred copies of their report; and the remaining copies of such reports; one-third to the order of the sergeant-at-arms of the senate, and two-thirds to the order of the sergeant-at-arms of the house, to be by them distributed pro rata to the members of the senate and house next to convene. [*Act approved February 13, 1907.*] (10th Sess. Chap. 12.)

446. (§ 314.) *Semi-annual reports.*—An account must be kept by the officers of the executive department and of all public institutions of the state, of all moneys received severally from all sources, and for every service performed and of all moneys disbursed, and a semi-annual report must be made to the governor under oath.

447. *Semi-annual reports of property on hand.*—It shall be the duty of every State Officer or official, and the person in charge of every State Institution, other than educational to make out and file with the Secretary of State semi-annual reports of all property belonging to the State, in his possession, the first report showing the amount of all kinds of property on hand and each subsequent report showing balance on hand last report, amount received or purchased, amount used, broken or destroyed, and balance on hand. [*Act approved March 2, 1905, § 1.*] (9th Sess. Chap. 56.)

448. *Secretary of state to provide blanks.*—It shall be the duty of the Secretary of State to provide blanks for property reports by State officers or officials, and for Boards of Trustees or Managers to provide Blanks for property reports of the institutions of which they have charge. [*Act approved March 2, 1905, § 2.*] (9th Sess. Chap. 56.)

449. *Penalty.*—Failure to comply with the provisions of this Act shall constitute a misdemeanor and shall be punished by a fine of not less than Five (5) nor more than Twenty-five (25) Dollars. [*Act approved March 2, 1905, § 3.*] (9th Sess. Chap. 56.)

TITLE II.

ELECTIONS.

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| CHAPTER | I. | GENERAL PROVISIONS RELATING TO ELECTIONS. |
| | II. | QUALIFICATIONS AND DISABILITIES OF ELECTORS. |
| | III. | REGISTRATION OF ELECTORS. |
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CHAPTER I.

GENERAL PROVISIONS RELATING TO ELECTIONS.

- ARTICLE I. TIME OF HOLDING ELECTIONS.
- II. ELECTION PROCLAMATIONS.
- III. MISCELLANEOUS PROVISIONS.

ARTICLE I.

TIME OF HOLDING ELECTIONS.

Section 450. General elections, when to be held.

“ 451. *Special elections, call.*

450. (§ 1150.) *General elections, when to be held.*—There must be held throughout the state, on the first Tuesday after the first Monday of November, in the year eighteen hundred and ninety-four, and in every second year thereafter, an election to be known as the general election.

Sanchez v. Fordyce, 141 Cal. 430; 75 Pac. 56.

451. (§ 1151.) *Special elections, call.*—Special Elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority. The board of county commissioners shall be authorized to call a special election at any time for the purpose of submitting to the qualified electors of the county a proposition to raise money for any public improvement desired to be made in the county. [*Act approved March 8th, 1901.*] (7th Sess. 114-115.)

ARTICLE II.

ELECTION PROCLAMATIONS.

Section 452. Election proclamations by the governor.

“ 453. *Governor's proclamation. What to contain.*

“ 454. *Publication and posting by county commissioners.*

“ 455. *Election proclamation by county commissioners.*

452. (§ 1160.) *Election proclamations by the governor.*—At least sixty days before a general election, and whenever he orders a special election to fill a vacancy in the office of state senator or member of the house of representatives at least ten days before such special election, the governor must issue an election proclamation, under his hand and the great seal of the state, and transmit copies thereof to the boards of commissioners of the counties in which such elections are to be held.

State v. Toole, 32 Mont. 8; 79 Pac. 404. The governor issued his proclamation giving notice of a general election to be held November 8, 1904, under this and the following section, and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. The relator claimed three judges

should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. It did not appear that the electors voted for more than two candidates for judgeships, and the petition was dismissed.

County v. White, 91 Cal. 435; 24 Pac. 864.

453. (§ 1161.) *Governor's proclamation. What to contain.*—Such proclamation must contain:

1. A statement of the time of election, and the offices to be filled.

2. An offer of rewards in the following form: "And I do hereby offer a reward of one hundred dollars for the arrest and conviction of any person violating any of the provisions of title IV., part I., of the penal code. Such rewards to be paid until the total amount hereafter expended for the purpose reaches the sum of five thousand dollars."

State v. Toole, 32 Mont. 8; 79 Pac. 404.

454. (§ 1162.) *Publication and posting by county commissioners.*—The board of county commissioners upon the receipt of such proclamation, may, in the case of general or special elections, cause a copy of the same to be published in some newspaper printed in the county, if any, and to be posted at each place of election at least ten days before the election; and in case of special elections to fill a vacancy in the office of state senator or member of the house of representatives, the board of county commissioners, upon receipt of such proclamation, may, in their discretion, cause a copy of the same to be published or posted as hereinbefore provided, except that such publication or posting need not be made for a longer period than five days before such election.

County v. White, 91 Cal. 435; 24 Pac. 864.

455. (§ 1163.) *Election proclamation by county commissioners.*—Whenever a special election is ordered by the board of county commissioners, they must issue an election proclamation, containing the statement provided for in subdivision I., of § 453, (1161), and must publish and post it in the same manner as proclamations issued by the governor.

County v. White, 91 Cal. 435; 24 Pac. 864.

ARTICLE III.

MISCELLANEOUS PROVISIONS.

Section 456. Plurality to elect.

“ 457. *Proceedings on tie vote.*

“ 458. *No fees for certificate of registration.*

“ 459. *Compensation of officers of election.*

“ 460. *County commissioners to have blanks prepared.*

456. (§ 1170.) *Plurality to elect.*—The person receiving at any election the highest number of votes for any office to be filled at such election, is elected thereto.

People v. Stewart, 132 Cal. 284; 64 Pac. 285.

457. (§ 1171.) *Proceedings on tie vote.*—In case any two or more persons have an equal and highest number of votes for either governor, lieutenant-governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session must, forthwith, by joint ballot of the two houses, elect one of such persons to fill such office; and in case of a tie vote for clerk of the district court, county attorney, or for any county officer except county commissioner, and for any township officer, the board of county commissioners must appoint some eligible person, as in case of other vacancies in such offices; and in case of a tie vote for county commissioner, the district judge of the county must appoint an eligible person to fill the office, as in other cases of vacancy.

State v. Acton, 31 Mont. 40; 77 Pac. 300. This section does not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. This

section, in so far as it relates to officers named in the constitution and the authority of the county commissioners to fill vacancies therein, is invalid.

458. (§ 1172.) *No fees for certificate of registration.*—No fees must be charged for registration or certificate thereof.

459. (§ 1173.) *Compensation of officers of election.*—The compensation of members of boards of election, including judges and clerks, is three dollars per day, and must be audited by the board of county commissioners, and paid out of the county treasury.

460. (§ 1174.) *County commissioners to have blanks prepared.*—The necessary printed blanks for poll lists, tally lists, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns, must be furnished by the boards of county commissioners to the officers of each election precinct at the expense of the county.

CHAPTER II.

QUALIFICATIONS AND DISABILITIES OF ELECTORS.

- Section 461. Elections to be by ballot.*
 “ 462. *Qualifications of voter.*
 “ 463. *Residence.*
 “ 464. *Privilege from arrest.*
 “ 465. *Exempt from military duty on election day.*
 “ 466. *Idiot or insane.*
 “ 467. *Women at school election.*
 “ 468. *Women tax payers.*
 “ 469. *Who are tax payers.*

461. (§ 1180.) *Elections to be by ballot.*—All elections by the people shall be by ballot.

462. (§ 1181.) *Qualifications of voter.*—Every male person of the age of twenty-one years or over, possessing the following qualifications, if his name is registered as required by law, is entitled to vote at all general and special elections and for all officers that now are, or hereafter may be, elective by the people and upon all questions which may be submitted to the vote of the people: First, he must be a citizen of the United States; second, he must have resided in the state one year and in the county thirty days immediately preceding the election at which he offers to vote. No person convicted of felony has the right to vote unless he has been pardoned. Nothing in this section contained shall be construed to deprive any person of the right to vote who had such right at the time of the adoption of the state constitution. After the expiration of five years from the time of the adoption of the state constitution no person except citizens of the United States have a right to vote.

State v. Martin, 24 Mont. 408; 62 Pac. 590. Bergevin v. Curtz, 127 Cal. 89; 59 Pac. 312.

463. (§ 1182.) *Residence.*—For the purpose of voting no person gains or loses a residence by reason of his absence while employed in the service of the state or of the United States, nor while engaged in the navigation of waters of the state or of the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum at the public expense, nor while confined in any public prison.

464. (§ 1183.) *Privilege from arrest.*—Electors must in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

465. (§ 1184.) *Exempt from military duty on election day.*—No elector is required to perform military duty on the days of election, except in times of war or public danger.

466. (§ 1185.) *Idiot or insane.*—No idiot or insane person is entitled to vote at any election in this state.

467. (§ 1186.) *Women at school election.*—Women have the right to vote at any school district election.

468. (§ 1187.) *Women tax payers.*—Upon all questions submitted to the vote of the tax payers of the state, or any political division thereof, women who are tax payers and possessed of the qualification for the right of suffrage required of men by the state constitution, equally with men, have the right to vote.

469. (§ 1188.) *Who are tax payers.*—The payment of a tax upon property by any person assessed therefor on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the tax payers of the state, or to the vote of the tax payers of such county or city, or any subdivision thereof, constitutes such person a tax payer at such election within the meaning of the last preceding section.

CHAPTER III.

REGISTRATION OF ELECTORS.

- Section 470. *Registration districts, laying out.*
- “ 471. *Registry agents.*
- “ 472. *Vacancies, how filled.*
- “ 473. *Failure of agent to qualify.*
- “ 474. *Oath of applicant when applying out of district.*
- “ 475. *Books and supplies.*
- “ 476. *Hours of registration.*
- “ 477. *Duties of agent.*
- “ 478. *Notice to be published.*
- “ 479. *Oath of electors.*
- “ 480. *Questions to be put to electors.*
- “ 481. *Residence of elector. Rules.*
- “ 482. *Naturalized citizens, how registered.*
- “ 483. *List of electors.*
- “ 484. *Notice of posting of list and hearing objections.*
- “ 485. *Copy of register and check list.*
- “ 486. *Delivery to judges.*
- “ 487. *Oath of registry agents.*
- “ 488. *Compensation of registry agent.*
- “ 489. *Appointment of Board of County Commissioners to be published.*
- “ 490. *Municipal elections not affected by this chapter.*
- “ 491. *Special elections.*
- “ 492. *Clerk to furnish copy of official register.*
- “ 493. *Persons not registered cannot vote.*

470. (§ 1200.) *Registration districts, laying out.*—The boards of county commissioners of the several counties of Mon-

tana must at each regular June meeting to be held every general election year, lay out their respective counties in convenient registration districts, which shall be numbered and known as registration district No. 1, registration district No. 2, and so on. There must not be less than two nor more than twenty registration districts in any county. The county commissioners must, in creating and establishing said registration districts, include in a district as many polling precincts as are necessary and convenient for the voters of the said registration district wherein such precincts may be established. The precincts must be established as provided by law, and no precinct must be established at a greater distance than ten miles from the office of a registry agent.

Steele v. Gilpatrick, 18 Mont. 455; 45 Pac. 1089.

471. *Registry agents.*—There must be one registration agent for each registration district, created pursuant to this Chapter. All registry agents must be competent persons and must be appointed by the Board of County Commissioners. They must be residents and qualified voters in the several districts for which they are respectively appointed. They are authorized to administer oaths and affirmations and do such other acts as may be necessary to fully carry out the provisions of this Chapter. A registry agent holds his office until his successor is appointed and qualified. No person, a candidate for, or who holds a State, County or other public office, other than that of notary public or Post Master, is eligible to or shall hold the office of registry agent of election. All registry agents must be appointed in each regular general election year, at the regular June meeting of the Board of County Commissioners, and hold their office for the period of two years, except as in this Chapter otherwise provided, but they are subject to removal at any time by the Board of County Commissioners. In any registration district wherein any incorporated City containing five thousand population or more, is situated, it is lawful for the County Commissioners to appoint two or more registry agents, and in any district where two or more registry agents are so appointed, the County Commissioners must allot, by order entered upon their minutes, to each of such agents the particular precincts in which such agents shall make the registration under this Chapter. [*Act approved February 16th, 1903.*] (8th Sess. Chap. 4.)

State v. Wine, 24 Mont. 376; 62 Pac. 414. The eight years exemption from the necessity of registering persons, provided for in this act, included the registration of 1898; and an elector of an election district included in an incorporated town of less than one thousand registered vot-

ers, who was properly registered in 1898, was not required to be registered in 1900, as a prerequisite to his right to vote at the general election in 1900, and could not compel the registry clerk to register him.

472. (§ 1202.) *Vacancies, how filled.*—It is the duty of the Chairman of the Board of County Commissioners of any County in the State, when he has received notice from any citizen of the

death, disqualification, or resignation of any registry agent, after the opening and prior to the closing of the books of registration, to immediately without giving notice, appoint some competent person to fill such vacancy and it is the duty of such person, so appointed to qualify within two days after receiving notice of such appointment.

473. (§ 1203.) *Failure to qualify.*—If the person so appointed fail to qualify within the time herein provided, voters may upon producing evidence of their right to vote, be registered in any other district in said county, and any person so registered in any other district must upon presentation and surrender of a certificate of registration, signed by the registry agent of said district be considered a legal voter in the precinct of the district in which he resides.

474. (§ 1204.) *Oath of applicant when applying out of district.*—If any person applies to be registered in any district other than the one in which he resides, and is entitled upon proof to a certificate of registration as provided in the next preceding section, such applicant, in addition to the proof required by this Chapter to entitle him to registration must take and subscribe an oath before the registry agent in substantially the following form:

“I do solemnly swear or affirm that I make the application for registration in District No.....of.....County, Montana, because there is no registry agent within District No..... which is the district within which I reside and am entitled to vote.” Upon taking such oath, such person is entitled to receive from the registry agent of such district a certificate which must bear the registration seal, and be substantially as follows, to-wit:

REGISTRATION CERTIFICATE.

“I hereby certify that.....has made proof before me that he is a citizen of the United States, of the age of..... years, and has been a resident of Montana for the past year, and a resident of the county for thirty days and that he is in all respects a qualified voter, under the laws; and that he has been registered in my district, because there is no registry agent within District No.....within which he resides. I further certify that he is entitled to vote in Precinct No.....of District No.....,County, Montana.

Witness my hand and the seal of the District No...., County, Montana.

(Seal)

Registry Agent, District No.....

475. (§ 1205.) *Books and supplies.*—The Board of County Commissioners of the several counties must provide for the registry agents in their respective counties, when and where required, all proper and necessary books, seals, and stationery

to carry out the provision of this chapter. They must furnish for each registration district a bound book which shall be known as the "Official Register," which shall be of sufficient size to register the voters of the district for the period of eight years and which must be ruled in columns of suitable dimensions to provide for the following entries, opposite the name of each elector, to-wit:

1. Number of the Register.
2. Date of Registration.
3. Name of Elector.
4. Age of Elector.
5. Where born.
6. Number of ward or name of precinct.
7. Description of residence.
8. Certificate of Naturalization, or a certified copy thereof, exhibited.
9. Date of cancellation of the entry.
10. Reason for cancellation.

They must also furnish each registry agent, with a seal, which must be engraved substantially as follows:County, Montana. Registry Seal, Registration District No..... The name of the County and the number of the registration district must be engraved upon the seal, to correspond to the County and registration district in which such seal is to be used. The "Official Registers," seals, affidavits and other papers shall be returned to the County Clerk by the Registry Agent within one week after the day of election.

476. *Hours of registration.*—It is the duty of the registry agent at any time when called on to do so, at his respective offices and not elsewhere, provided, that the Board of County Commissioners may designate places for registration, within any registry district, in addition to the home office, between the hours of nine A. M. and nine P. M., on all legal days, from nine A. M. of the fourth Monday prior to any general election to nine P. M. of the second following Saturday, to receive and register the names of all persons legally qualified and entitled to vote at such election, or who (being otherwise qualified) will have legally acquired a residence at the date of election, and who have a right to vote at such ensuing election, according to the provisions of law under which said election may be held, in each election precinct within their respective districts, provided, that such registry agent shall on the second Monday prior to any general election, between the hours of nine o'clock A. M. and nine o'clock P. M. at his main and home office in his district, receive and register, as other voters are registered, according to law, the name of all such legal voters of his said district, who are otherwise entitled to register and who shall, in addition satisfy such registry agent, by oath or affirmation and by additional evidence, if required by such registry agent,

that they were, by sickness or other physical disability, or by unavoidable absence during the entire previous two weeks last past from such registration district unable to register at any time during the two weeks last past, provided, that, except in registration districts included in an incorporated town or city, which town or city contained at the last preceding State election over one thousand registered voters, such general registration of all voters shall only be required every eight years, from and after the year 1898, and any person who has been registered in any district, except as above noted, at any time within said eight year periods, and who has been a continuous resident of such district since such registration shall be entitled to vote, if otherwise qualified, without further registration. If at any time it shall be made to appear, by the affidavits of two credible and responsible electors of the district, that any registered person has died or permanently removed from the district, the registry agent shall place such affidavits on file and shall cancel the entry with red ink and shall enter the date and cause, and such cancelled name shall not appear in the printed list, copies of the official registers and check lists herein provided for. [*Act approved February 17th, 1899, § 1.*] (*6th Sess. 54-5.*)

State v. Wine, 24 Mont. 377; 62 Pac. 414.

State v. Davidson, 24 Mont. 412, 65 Pac. 1003. Under this act requiring a biennial registration of voters in registration districts included in an incorporated town or city containing at the last preceding state election over one thousand voters, an elector residing in an

incorporated town not containing at the preceding state election one thousand voters, for which election he was registered, is not required to register for the general election of 1900, although the registration district, which was not confined to the city may contain over one thousand voters.

477. (§ 1207.) *Duties of agent.*—Registry agents must enter on the “Official Register,” under the proper heading, the number and date of registration, the name (with the first of given name in full), the age and nativity of the elector, together with the number of the ward or name of the precinct, and a particular description of the house, building, or room, in which he resides, such as will enable a person of common understanding to find the same without difficulty, and when the person so registered is of foreign birth, the fact of the exhibition of, or failure to exhibit, his certificate of naturalization or certificate of intention to become a citizen or a certified copy thereof, must be noted in the column provided for that purpose, which list properly entered, as in this section provided, is to be known as the “Official Register” of the electors of the respective districts. If any person fails or refuses to give his residence with the particularity required in this section, he must not be registered.

478. *Notice to be published.*—Each registry agent must cause to be published in at least one newspaper published within his district, and if there be no newspaper published in such district then in a newspaper published at the nearest point to his district, and within the county in which such district is

situated, for twenty days before the expiration of the time provided for registration, prior to any general election, a notice, signed by the registry agent, to the effect that the time for the registration of the names of the qualified electors in Election District No. . . ., giving the names also of the several precincts embraced within such registration district, prior to the election (specifying the election) to be held on the day of, A. D. 18, for the county of Montana, will expire at nine o'clock P. M. on the day of A. D. 18 The publication of said notice must continue until the expiration of the time provided for said registration.

It is hereby made the duty of the registry agent on or before the first day upon which he is required to commence registration of voters, to publish in some newspaper within his county a public notice stating when he will sit within each and every precinct in his registration district. In such notice he shall designate some place at his home office where he shall be found when not sitting within the other precincts. He shall also designate in such notice not less than one day, on which he will sit within each precinct and name the exact place where he will be found.

If there be no newspaper published in his district then copies of such notices shall be posted in not less than five (5) conspicuous places within said district and shall be kept posted during the period of registration. Any elector qualified to register within an election district may register in any precinct within the district but shall give the number or name of the precinct within which he resides. [*Act approved March 9, 1897, § 2.*] (5th Sess. 117.)

479. *Oath of electors.*—Every person applying to be registered must, before he is entitled to have his name registered take and subscribe the following oath or affirmation, which must be administered by the registry agent, "I do solemnly swear (or affirm), that I am a citizen of the United States, of the age of twenty-one years and will have been a resident of Montana one year, and of this county thirty days, on the day next preceding the day of the next ensuing election, and that I am not registered elsewhere in Montana for this electoral year, So help me God" or under the pains and penalties of perjury, *Provided*, That when any person applies to be registered, who swears that he will be entitled to become a full citizen of the United States before the day of election, and is otherwise qualified to be registered, he shall be registered.

The registry agent shall write opposite the name of a person, registered by virtue of this proviso, the words "To be challenged" and such person shall not be entitled to vote unless he exhibits to the judges of election his final naturalization papers. The registry list shall be opened at all times during the registration period to inspection by any qualified elector. [*Act approved March 9th, 1897, § 3.*] (5th Sess. 118.)

Steele v. Gilpatrick, 18 Mont. 453; 45 Pac. 1089.

Lane v. Bailey, 29 Mont. 552; 75 Pac. 192. The oath required by this section was not administered because the registry agent did not think it was necessary. The failure of electors for this

reason to take the oath did not disqualify them. The purpose of this act was to make the registration of qualified electors in Montana necessary but once in eight years in election districts, except districts in some incorporated towns and cities.

480. *Questions to be put to elector.*—When any person appears and demands to be registered, whom the registry agent does not know to be entitled to registry under the qualifications required by law, for the election then ensuing, the registry agent must question the applicant generally under oath as to his qualifications as an elector and if satisfied must enter his name in the registry, but if the registry agent is not fully satisfied, or if the applicant be challenged by a qualified elector of the county, stating distinctly the grounds of challenge, the registry agent must require the applicant to answer truly, under oath or affirmation, the following questions together with such other question as such registry agent may consider necessary or proper, testing his qualifications as an elector for the ensuing election, to-wit:

1. Are you a citizen of the United States?
2. Are you now, or will you be twenty-one years of age prior to the day of the next ensuing election?
3. On the day of the next ensuing election, will you have resided in Montana one year, and in this county thirty days next preceding the day of said election?
4. Are you now a resident of the registration district in which you propose to be registered?
5. Are you registered for this electoral year in any other registration district in the name you have now given, or in any other name?

If any of the foregoing questions are answered in the negative except the fifth, or that in the affirmative the applicant must not be registered, but if the applicant answer all the foregoing questions in the affirmative except the fifth and that in the negative and if the answers to other questions propounded do not show him to be disqualified, the applicant must be registered. A resident within the meaning of this Chapter, must be construed to mean a person who has resided or will have resided continuously within Montana for one year and in the county thirty days on the day next preceding the day of the next ensuing election. Whenever a person is registered under the provisions of this Chapter such registration is good for eight years, except as otherwise provided in Section 476 (1206.) A change of residence from a district or county will require a new registration; *Provided* that if any person who has been registered in any year shall exchange his residence before the period of registration closes he shall notify the registry agent with whom he registered of such change and request him to cancel such registration; and he shall

obtain from such registry agent a certificate under the hand of such registry agent and the seal of the district, that such registration has been cancelled, giving the date thereof; any person except in districts containing incorporated towns or cities of more than one thousand electors, and except in the years of general registration provided in § 476 (1206) of this chapter, so changing his residence between the period of registration shall give like notice and obtain a like certificate of cancellation and such certificate must be presented and surrendered to any other registry agent where such person offers to register, before he will be entitled to register again. Notice of change of residence may be given in person or by letter and if given by letter the signature shall be witnessed by two persons free holders and electors of the state. [*Act approved March 9, 1897, § 4.*] (5th Sess. 118.)

481. *Residence of elector. Rules.*—For the purpose of registration or voting, the place of residence of any person must be governed by the following rules as far as they are applicable:

1. That place must be considered and held to be the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning.

2. A person must not be held to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this State, nor while a student at any institution of learning, nor while kept at any almshouse or other asylum at the public expense, nor while confined in any public prison, nor while residing upon any Indian or Military reservation.

3. No soldier, seaman, or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed at any military or naval place within the same.

4. A person must not be considered to have lost his residence who leaves his home to go into another State, or other district of this State, for temporary purposes merely with the intention of returning, provided he has not exercised the right of the election franchise in said state or district.

5. A person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely without the intention of making such county his home.

6. If a person removes to another state with the intention of making it his residence, he loses his residence in this State.

7. If a person removes to another state with the intention of remaining there for an indefinite time, and as a place of present residence, he loses his residence in this state, notwithstanding he entertains an intention of returning at some future period.

8. The place where a man's family resides is presumed to be his place of residence, but any man who takes up or continues his abode with the intention of remaining, or a place other

than where his family resides, must be regarded as a resident of the place where he so abides.

9. A change of residence can only be made by the act or removal joined with the intent to remain in another place. There can only be one residence. A residence cannot be lost until another is gained.

10. The term of residence must be computed, by including the day on which the person's residence commences and by excluding the day of election.

11. Any person living upon an Indian or Military reservation shall not be deemed to be a resident of Montana, within the meaning of this Chapter, unless such person has acquired a residence in some county in Montana prior to taking up his residence upon such Indian or Military reservation; *provided* that if such person shall not be in the employ of the Government while residing upon such Indian or Military reservation, such person shall not be considered a resident of the State of Montana. [*Act approved March 9, 1897, § 4.*] (*5th Sess. 120.*)

482. *Naturalized citizens, how registered.*—When a naturalized citizen applies for registration his certificate of naturalization or a certified copy thereof must be produced and stamped, or written in ink by the registry agent with such registry agent's name and the year and day and county where presented, but if it satisfactorily appears to the registry agent, by the affidavit of the applicant (and the affidavit of one or more credible electors as to the credibility of such applicant when deemed necessary), that his certificate of naturalization or a certified copy thereof is lost or destroyed or beyond the reach of the applicant for the time being said registry agent must register the name of said applicant, unless he is by law otherwise disqualified; but in case of failure to produce the certificate of naturalization or a certified copy thereof except as provided in section 479 (1209) of this Chapter the registry agent must propound to him the following questions:

1. In what year did you come to the United States?
2. In what state or territory, county, court, and year were you finally admitted to citizenship?
3. Where did you last see your certificate of naturalization, or a certified copy thereof?

The said affidavit must be retained by the registry agent and returned with the register to the County Clerk. No person shall be required to exhibit his naturalization papers or make said affidavit a second time, where he has been a continuous resident of the same district and where his name is upon the official register in the possession of the registry agent. [*Act approved March 9, 1897, § 4.*] (*5th Sess. 121.*)

483. *List of electors.*—On the day next succeeding that on which the registration of electors, prior to any election

mentioned in this Chapter, shall have been closed, the registry agent must with all reasonable expedition, and within four days, prepare and cause to be written or printed, a full and complete and true list of all the names then remaining on the official register for each election precinct, alphabetically arranged, commencing with the surname of each, and then must write or print such reasonable number of copies of each registration district list as they may deem necessary showing on one sheet, but under separate headings in such list the registered voters in each precinct in the district; at least five copies of which said list he must cause to be posted up in as many public and conspicuous places within each and every district to which they apply. Each registry agent must, as soon as such lists are printed or written, subscribe and make oath to one copy thereof, as being a true, correct and complete list of all electors registered in his registration district from the commencement to the close of the registration in said district, and must within two days after the publication or writing of such list, deliver personally or by registered letter such verified copy to the County Clerk of that county, to be by him posted in a conspicuous place in his office until election day, and thereafter filed away, as other records of the county, and the remainder of such lists must be distributed among the electors of the respective precincts. [*Act approved March 9, 1897, § 4.*] (*5th Sess. 122.*)

484. *Notice of posting of list and hearing objections.*—The registry agents must give notice in said lists that they will receive objections to the right to vote of any person so registered until six o'clock P. M. on the Saturday previous to the day of the election; and also requesting all persons whose names may be erroneously entered in said lists or erroneously cancelled upon the "Official Register" to appear at the proper registry office and have such error corrected. Such objections to the right to vote of any person registered must be made only by a qualified elector, in writing duly verified setting forth the grounds of objection or disqualification. The registry agent before whom any such affidavits are made must carefully preserve the same and deliver them, with the "Check List" and other papers required by this Chapter, to be delivered to the judges of election, as is in this Chapter provided and he must write distinctly opposite to the name of any person to whose qualifications as an elector objections may be thus made, the words to be challenged or words to that effect. It is the duty of the judges of election, if on election day such person who has been objected to applies to vote, to test, under oath his qualifications and if he is found to be disqualified, from any cause under the law, or if he refuses to take an oath as to his qualifications he must not be permitted to vote. Any elector whose name has been erroneously cancelled upon such official register shall be re-regis-

tered upon making affidavit supported by the affidavit of a freeholder and qualified elector of the district that he has been a continuous resident of the district since his last previous registration and he is fully qualified to be registered.

485. *Copy of register and check lists.*—During the time intervening between the closing of any registration of electors and the day of the next ensuing election, each registry agent must carefully copy from the official register into suitable books, one for each election precinct within his district, the names of the electors registered for such election precinct, alphabetically arranged (the surname first) entering opposite each name the number it bears on the official register together with words requiring challenges and all other entries therein found opposite the name. The registry agent must also prepare in suitable books to be known as “check lists” one for each election precinct a list of the names of all electors found on the official register for such election precinct alphabetically arranged (the surname first) with the number each name bears in the official register placed at the left of the name and with a blank column at the right for the use of the judges at election headed with the words—“Voted at the general election 18—.” [*Act approved March 9, 1897, § 4.*] (5th Sess. 123.)

486. *Delivery to judges.*—The copy of the official register together with the “check list” for each election precinct must be carefully prepared and duly certified to by the registry agent and delivered together with the affidavits mentioned in the preceding sections of this chapter to one of the judges of election, in each election precinct not later than the day next preceding that on which such election is to be held, and such copy of the official register, “check list,” affidavits and any surrendered certificate of registration must be preserved and transmitted by the judges of election to the county clerk of the county, as part of the election returns of said precinct. If any registry agent refuses or fails to furnish to the judges of election of any precinct, the lists of electors, provided for in section 485 (1215) the judges of election are authorized to take a copy of the printed or written lists of electors, provided for in this chapter, and conduct the election in said precinct, in accordance with the provisions of this title and their returns must show the reason for using such lists instead of the regular lists, herein provided at such election. [*Act approved March 9, 1897, § 4.*] (5th Sess. 123.)

487. (1218.) *Oath of registry agents.*—Before entering upon the duties prescribed in this chapter, the registry agents must severally take and subscribe before an officer duly authorized to administer oaths, the constitutional oath of office, which must be filed in the office of the county clerk of their respective counties.

Steele v. Gilpatrick, 18 Mont. 454; 45 Pac. 1089.

488. (§ 1219.) *Compensation of registry agent.*—The several registry agents are entitled to receive as full compensation for all services rendered by them under the provisions of this chapter, such sums as may be allowed by the county commissioners, and such compensation may be a per capita of twenty-five cents for each and every qualified elector registered in each year, or it may be a per diem not to exceed five dollars. In no event must registry agents receive more than at the rate of five dollars per day, whether the basis of their compensation be a per capita or otherwise, and their right of compensation is a county charge, and their accounts must be made out so as to clearly show the number of names by them severally registered during the year, and sworn to and filed with the board of county commissioners of their respective counties, and said claims, together with all other just and reasonable demands for books, advertising and printing, necessarily incurred in carrying out the requirements of this chapter, must be audited and paid out of the general fund of the several counties as other county charges.

Steele v. Gilpatrick, 18 Mont. 454; 45 Pac. 1089.

489. (§ 1220.) *Appointment of board of county commissioners to be published.*—The clerk of the board of county commissioners must make full and minute entries of all proceedings had under this chapter, and published in a newspaper printed in the county the names of the registry agents appointed, and notify in writing the registry agents of their appointment.

Steele v. Gilpatrick, 18 Mont. 456; 45 Pac. 1089.

490. (§ 1221.) *Municipal elections not affected by this chapter.*—Nothing in this chapter must be construed to affect the laws regulating the registration of voters in municipal elections.

Steele v. Gilpatrick, 18 Mont. 456; 45 Pac. 1089.

491. (§ 1222.) *Special elections.*—At any special election held for any purpose in any county, copies of the official register and check list, which were printed or written before and used at the next preceding general election, must be used, and no new registration need be made.

492. (§ 1223.) *Clerk to furnish copy of official register.*—Before the day on which such special election is appointed to be held, the county clerk must furnish one of the judges in each election precinct, at a time not later than one day next preceding the day the election is to be held, a copy of the official register and a check list, for his precinct, but no copies need be posted.

493. *Persons not registered cannot vote.*—No person shall be entitled to vote at any election mentioned in this Act unless his name shall, on the day of election, appear in the copy of the official register or check list, furnished by the registry agents to the judges of election, at the precinct at which he offers to vote, except as otherwise provided in this Chapter; and the fact that

his name so appears in the check lists and in the copy of the official register, in the possession of the judges of election, shall be prima facie evidence of his right to vote; *Provided*, that when the judges shall have good reason to believe, or when they shall be informed by a qualified elector that the person offering to vote is not the person who was so registered in that name, the vote of such person shall not be received until he shall have proved his identity as the person who was registered in that name. [*Act approved March 9th, 1897, § 5.*] (*5th Sess. 123.*)

CHAPTER IV.

ELECTION PRECINCTS.

*Section 494. County commissioners to establish election precincts.**

“ 495. *Boundaries must be defined.*

“ 496. *Board may alter, etc., precincts.*

“ 497. *Board to designate place in precinct for holding election.*

“ 498. *Proceedings where place not designated, etc.*

“ 499. *No precinct to be established in the Indian country.*

494. (§ 1240.) *County commissioners to establish election precincts.*—The board of county commissioners of each county must establish a convenient number of election precincts therein, which precincts must continue as established until changed.

495. (§ 1241.) *Boundaries must be defined.*—In the order establishing precincts, the boundaries thereof must be defined with as much accuracy as practicable.

496. (§ 1242.) *Board may alter, etc., precinct.*—The board may, at the regular session next preceding a general election or special election, change the boundaries of, create new, or consolidate established precincts; but no precinct must be established, nor must the boundaries of one already established be altered after the first day of registration, as provided in chapter III., of this title. Prior to that day the board has discretionary power, on petition of ten qualified voters in any election precinct, to vacate, change, consolidate, remove or establish any voting precincts within any registration district, but the change or alteration of precincts must be made in such a manner as that each precinct shall not contain more than four hundred voters.

497. (§ 1243.) *Board to designate place in precinct for holding election.*—The board must, at the session at which judges of election are appointed, make an order designating the house or place within the precinct where the election must be held.

498. (§ 1244.) *Proceedings where place not designated, etc.*—If the board fail to designate the house or place for holding

the election, or if it cannot be held at the house or place designated, the judges of election, or a majority of those acting as such in the precinct must, two days before the election and by an order, under their hand (copies of which they must at once post in three public places in the precinct), designate the house or place.

499. (§ 1245.) *No precinct to be established in the Indian country.*—No officer of this state, nor of any county, must establish a precinct within the limits of any county not fully organized, or at any Indian agency, or at any trading post in the Indian country, or on any Indian reservation.

Coleman v. Kerr, 33 Mont. 202; 83 Pac. 395.

CHAPTER V.

JUDGES OF ELECTION.

- Section 500. Judges of election, how appointed.*
 “ 501. *Number of judges to be appointed.*
 “ 502. *Number appointed in new precincts.*
 “ 503. *Not more than a majority to be from any one political party.*
 “ 504. *Clerk to give notice to judges of appointment. Electors to elect judges in case of vacancy.*
 “ 505. *Judges to choose clerks and to serve until others appointed.*
 “ 506. *Clerks to mail to judges notices of election. Form of notice.*
 “ 507. *Notices to be posted by the judges.*
 “ 508. *Oath of judges and clerk.*
 “ 509. *Judges and clerks may administer oaths.*
 “ 510. *Ballot boxes.*
 “ 511. *Size of the opening of the ballot box.*
 “ 512. *Ballot box to be exhibited.*
 “ 513. *County clerk to have printed instructions to the electors.*

500. (§ 1260.) *Judges of election, how appointed.*—The board of county commissioners of the several counties, at the regular session next preceding a general or special election, must appoint five judges of election for each precinct in which the voters therein, by the last registration, were one hundred or more, and three judges of election for each precinct in which such registration was less than one hundred.

501. (§ 1261.) *Number of judges to be appointed.*—The board of county commissioners, notwithstanding the registration, may appoint five judges of election for each precinct in which, upon information obtained by them, they have reason to believe contains one hundred voters or more, and three judges

of election in precincts which upon information obtained by them, they have reason to believe contains less than one hundred voters.

502. (§ 1262.) *Number appointed in new precincts.*—In any new precinct established, the board of county commissioners must, in like manner, appoint five or three judges of election, according to the estimated number of voters therein, as required by the two next preceding sections.

503. (§ 1263.) *Not more than a majority to be from any one political party.*—In making the appointment of judges of election not more than a majority of such judges must be appointed from any one political party for each precinct.

504. (§ 1264.) *Clerk to give notice to judges of appointment. Electors to elect judges in case of vacancy.*—The clerk of the board must make out and forward by mail, immediately after the appointment of the judges, a notice thereof in writing, directed to each of them. In case there is no postoffice in any one or more of the precincts in any county, the clerk must forward notices of such appointment by registered mail to the postoffice nearest such precinct, directed to the judges aforesaid. If in any of the precincts any of the judges refuse or neglect to serve, the electors of such precinct may elect a judge or judges to fill vacancies on the morning of the election, to serve at such election.

505. (§ 1265.) *Judges to choose clerks and to serve until others appointed.*—The judges must elect two persons having the same qualifications as themselves, to act as clerks of the election. The judges continue judges of all elections to be held in their respective precincts until other judges are appointed; and the clerks of election continue to act as such during the pleasure of the judges of election, and the board of county commissioners must from time to time fill vacancies which may occur in the offices of judges of election in any precinct within their respective counties.

506. (§ 1266.) *Clerks to mail to judges notices of election. Form of notice.*—The clerks of the several boards of county commissioners must, at least thirty days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

“Notice is hereby given that on the first Tuesday after the first Monday of November, 18—, at the house ———, in the county of ———, an election will be held for ——— (naming the offices to be filled, including electors of president and vice president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at eight o'clock in

the morning and continue open until six o'clock in the afternoon of the same day.

Dated this ——— day of ———, A. D. 18—.

Signed A. B., Clerk of the Board of County Commissioners."

507. (§ 1267.) *Notices to be posted by the judges.*—The judges to whom such notice is directed, as provided in the next preceding section, must cause to be put up in three of the most public places in each precinct, the notices of election in such precinct, at least ten days previous to the time of holding any general election, which notices must be posted as follows: One at the house where the election is authorized to be held, and the others at the two most public and suitable places in the precinct.

508. (§ 1268.) *Oath of judges and clerk.*—Previous to votes being taken, the judges and clerks of election must take and subscribe the official oath prescribed by the constitution. It is lawful for the judges of election, and they are hereby empowered, to administer the oath to each other, and to the clerks of the election.

509. (§ 1269.) *Judges and clerks may administer oaths.*—Any member of the board, or either clerk thereof, may administer and certify oaths required to be administered during the progress of an election.

510. *Ballot boxes.*—There shall be provided at the expense of the county, for each polling precinct, a substantial ballot box or canvas pouch with a secure lock and key for the ballots and detached stubs as hereinafter provided for. There shall be one opening, and no more in such box or canvas pouch, of sufficient size to admit a single folded ballot. The adoption of the canvas pouch to be used instead of the ballot box, in any precinct, shall be optional with the commissioners of each county, but in such precincts where pouches are so adopted, the pouches shall be returned to the county clerk together with the other election returns, as by law provided. [Act March 5, 1907, § 1.] (10th Sess. Chap. 88.)

511. (§ 1271.) *Size of the opening of the ballot box.*—There must be an opening in the lid of such box of no larger size than shall be sufficient to admit a single folded ballot.

512. (§ 1272.) *Ballot box to be exhibited.*—Before receiving any ballots, the judges must, in the presence of any persons assembled at the polling place, open and exhibit the ballot box and remove any contents therefrom, and then close and lock the same, delivering the key to one of their members, and thereafter the ballot box must not be removed from the polling place or presence of the bystanders until all the ballots are counted, nor must it be opened until after the polls are finally closed.

513. (§ 1273.) *County clerk to have printed instructions to the electors.*—The county clerk of each county must cause to be

printed in large type on cards, in the English language, instructions for the guidance of electors in preparing their ballots. He must furnish six cards to the judges of election in each election precinct, and one additional card for each fifty registered electors, or fractional part thereof, in the precinct, at the same time and in the same manner as the printed ballots. The judges of election must post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about polling places upon the day of election. Said cards must be printed in large, clear type, and must contain full instructions to the voters as to what should be done, viz.:

1. To obtain ballots for voting.
2. To prepare the ballots for deposit in the ballot boxes.
3. To obtain a new ballot in the place of one spoiled by accident or mistake. Said card must also contain a copy of §§ 8130 (66), 8134 (70), 8135 (71), 8136 (72), 8137 (73), and 8138 (74), of the Penal Code. There must also be posted in each of the compartments, or booths, one of the official tickets, as provided in chapter IX., of this title, without the official stamp, and not less than three such tickets posted elsewhere in and about the polling places, upon the day of election.

CHAPTER VI.

OPENING AND CLOSING OF POLLS.

Section 514. Time of opening and closing of polls.

“ 515. *Proclamation at opening and thirty minutes before closing polls.*

“ 516. *Proclamation at closing polls.*

514. (§ 1290.) *Time of opening and closing of polls.*—The polls must be opened at eight o'clock on the morning of election day and must be kept open continuously until six o'clock in the afternoon of said day, when the same must be closed.

515. (§ 1291.) *Proclamation at opening and thirty minutes before closing polls.*—Before the judges receive any ballots they must cause it to be proclaimed aloud at the place of election that the polls are open, and thirty minutes before the closing of the polls proclamation must be made that the polls will close in one half hour.

516. (§ 1292.) *Proclamation at closing polls.*—When the polls are closed that fact must be proclaimed aloud at the place of election; and after such proclamation no ballots must be received.

CHAPTER VII.

POLL BOOKS.

Section 517. County commissioner to furnish poll books.

Section 518. Clerk to forward poll books to judges.

“ 519. *Form of poll book.*

“ 520. *Want of form not to vitiate.*

517. (§ 1300.) *County commissioner to furnish poll books.*—The board of county commissioners of each county must furnish for the several election precincts in each county, poll books, after the forms hereinafter prescribed.

518. (§ 1301.) *Clerk to forward poll books to judges.*—The clerk of the board must forward by mail, as a registered package, to one of the judges of election so appointed, in each precinct, at least ten days prior to any general election and five days prior to any special election, two of such blank poll books for the use of the judges of such precinct.

519. (§ 1302.) *Form of poll book.*—The following is the form of poll books to be kept in duplicate by the judges and clerks of election:

Poll Book of Precinct No. ———
Number and names of electors voting.

No.	Name.	No.	Name.	No.	Name.

Total number of votes cast at precinct No. ———.

We, the undersigned, judges and clerks of an election held at precinct No. ———, in the county of ———, in the state of Montana, on the ——— day of ———, 18—, having first been severally sworn according to law, hereby certify that the foregoing is a true statement of the number and names of the persons voting at said precinct at said election, and that the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit:

Governor.	Members of Legislative Assembly.		
A. B., ———Votes.	Senate.	House of Representatives.	
C. D., ———Votes.	E. F., ———Votes.	G. H., ———Votes.	

Certified and signed by us.

_____ } Clerks.

_____ }
 _____ } Judges.
 _____ }

520. (§ 1303.) *Want of form not to vitiate.*—No poll book or certificate returned from any election precinct must be set aside

or rejected for want of form nor on account of its not being strictly in accordance with the directions of this title, if it can be satisfactorily understood.

CHAPTER VIII.

CANDIDATES AND PRIMARY ELECTIONS.

ARTICLE I. CANDIDATES AND QUESTIONS FOR THE ELECTION.

II. PRIMARY ELECTIONS.

ARTICLE I.

CANDIDATES AND QUESTIONS FOR THE ELECTION.

- Section 521. Convention or primary meeting defined.*
 “ 522. *Certificate of nomination, what to contain.*
 “ 523. *Certificate, where filed.*
 “ 524. *Certificates of nomination otherwise made.*
 “ 525. *Certificate not to contain certain things. One person not to be nominated for more than one office.*
 “ 526. *Certificates to be preserved one year.*
 “ 527. *When certificate to be filed.*
 “ 528. *Secretary of state to certify to county clerk names of persons nominated.*
 “ 529. *Candidate may decline ten days before election. In municipal election two days.*
 “ 530. *Vacancies may be filled by further certificates.*
 “ 531. *How questions submitted to electors may be certified.*
 “ 532. *Errors, how corrected.*

521. (§ 1310.) *Convention or primary meeting defined.*—Any convention or primary meeting held for the purpose of making nominations to public office, or the number of electors required in this chapter, may nominate candidates for public office to be filled by election in the state. A convention or primary meeting within the meaning of this chapter is an organized assemblage of electors or delegates representing a political party or principle.

State v. Hays, 31 Mont. 236; 78 Pac. 487. A committee of parties claiming to be opposed to corporate rule filed in the office of the secretary of state certificates of nomination for officers. This committee was appointed by a mass convention of electors representing the counties of the state, but the call did not state that the purpose was to nominate any candidate for office. This convention was not composed of delegates or electors of a political party, but elect-

ors advocating a principle and assembled to organize a party. The convention had no authority to make such nominations and therefore the committee could not act in the matter.

State v. Rotwitt, 18 Mont. 506; 46 Pac. 372. Sections 1310, 1311 and 1312 of the Political Code recognize systems of conventions and primary meetings held to nominate candidates for public office. Such conventions are meant to be organized assemblages of electors or

delegates, fairly representating the entire body of electors of the political party which may lawfully vote for the candidates of any such convention. When a judicial district comprises two counties, both counties must have an opportunity to participate in the nomination

of a candidate for district judge by a political party, and a nomination by a convention composed of delegates from one county, when the other county did not have the privilege of representation therein, is a nullity.

522. (§ 1311.) *Certificates of nomination, what to contain.*

—All nominations made by such convention or primary meeting must be certified as follows: The certificate of nomination, which must be in writing, must contain the name of each person nominated, his residence, his business, his business address, and the office for which he is named, and must designate in not more than five words, the party or principle which such convention or primary meeting represents, and it must be signed by the presiding officer and secretary of such convention or primary meeting, who must add to their signatures, their respective places of residence, their business and business addresses. Such certificates must be delivered by the secretary or the president of such convention or primary meeting, to the secretary of the state or to the county clerk, as in this chapter required.

State v. Martin, 24 Mont. 506; 62 Pac. 589. The requirement that the certificate shall contain a designation of the party or principle which the ticket represents is evidently designed to guide the proper officer in printing the ballot, so that he may group the candidates and distinguish them by this designation.

State v. Hays, 31 Mont. 230; 78 Pac. 302. This section contemplates one certificate of nomination, and one only, as coming from the state convention, and it is not the duty of the officers to make a separate certificate for each nominee.

State v. Tooker, 18 Mont. 543; 46 Pac. 531. A political club in Helena, County of Lewis and Clark, called the Republican Silver Club, composed of four hun-

dred members, made nominations of candidates for county offices. No convention or primary meeting was held within the meaning of this section.

State v. Johnson, 18 Mont. 548; 46 Pac. 533.

State v. Hogan, 24 Mont. 383; 62 Pac. 583. A nomination by delegates named in a mass meeting in one of the counties of a judicial district, called to formulate a protest to the action of a regular county convention, is invalid. The meeting had no authority to name delegates to represent the county in place of those named by the regular convention and the electors of both counties are not represented.

523. (§ 1312.) *Certificate, where filed.*—Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, must be filed with the secretary of state. Certificates of nomination for county, township and precinct officers, must be filed with the clerks of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal officers must be filed with the clerks of the respective municipal corporations wherein the officers are to be elected. The certificate of nomination of joint member of the house of representatives must be filed in the offices of the county clerks of the counties to be represented by such joint member.

State v. Rotwitt, 18 Mont. 506; 46 Pac. 372.

State v. Hays, 27 Mont. 176; 70 Pac. 321. A district judge is a state officer, and there is no provision in this section requiring the certificate of nomination of such an officer from a district containing only one county to be filed with the secretary of state. The certificate

of nomination of a candidate for district judge of the second judicial district comprising Silver Bow County must be filed with the clerk of that county.

State v. Hogan, 24 Mont. 380; 62 Pac. 494.

State v. Hogan, 24 Mont. 401; 62 Pac. 684.

524. (§ 1313.) *Certificates of nomination otherwise made.*—Candidates for public office may be nominated otherwise than by convention or primary meeting in the manner following:

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in § 522 (1311) of this chapter, must be signed by electors residing within the state and district, or political division in and for which the officer or officers are to be elected, in the following required numbers:

The number of signatures must not be less in number than five per cent of the number of votes cast for the successful candidate for the same office at the next preceding election whether the said candidate be state, county, township, municipal or any other political division or subdivision of state or county; but the signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature, his place of residence, his business and his business address. Any such certificate may be filed as provided for in the next preceding section of this chapter, in the manner and with the same effect as a certificate of nomination made by a party convention or primary meeting. [Act approved March 14, 1895.]

State v. Rotwitt, 18 Mont. 509; 46 Pac. 372. The court does not decide that a certificate of nomination by electors under this section *must* contain the designation of a party or principle. The section contemplates simply the candidacy of one not a nominee of a party, an independent or electors' candidate. When all the statutes are read the court

is not prepared to say that the *information* referred to in this section necessarily extends to more than the name, residence, business address and the office for which the candidate is nominated. A candidate for district judge cannot by petitions have his name placed on the ticket of a regular party in existence.

525. (§ 1314.) *Certificate not to contain certain things.* One person not to be nominated for more than one office.—No certificate of nomination must contain the name of more than one candidate for each office to be filled. No person must join in nominating more than one person for each office to be filled, and no person must accept a nomination to more than one office.

State v. Hays, 31 Mont. 237; 78 Pac. 487. The executive committee of the Anti-Trust Democratic and Anti-Trust Republican party nominated two tickets, composed of different persons, as candidates for the same office. This proceeding is illegal and within the inhibi-

tion of this section. The convention could not nominate different persons for the same office, nor can it be done by the committee, and the names of such nominees are not entitled to places on the official ballot.

526. (§ 1315.) *Certificates to be preserved one year.*—The secretary of state and the clerks of the several counties and of the several municipal corporations must cause to be preserved in their respective offices for one year all certificates of nomination filed under the provisions of this chapter. All such certificates must be open to public inspection under proper regulations to be made by the officers with whom the same are filed.

527. (§ 1316.) *When certificate to be filed.*—Certificates of nomination to be filed with the secretary of state, must be filed not more than sixty days and not less than thirty days before the

day fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not more than sixty days and not less than twenty days before the election; certificates of the nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty days and not less than three days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections to fill vacancies.

State v. Hays, 31 Mont. 229; 78 Pac. 302. Albert J. Galen was nominated in 1904 by the Republican State Convention for the office of attorney general. Through inadvertence the name of Galen and the office of attorney general was omitted from the certificate of nominations by the officers of the convention. The State Republican Committee at a regular meeting declared that a vacancy existed and nominated Galen to fill the vacancy. This section requiring certificates of nomination to be filed with the secretary of state not less than thirty days before the day fixed by law for the election is mandatory, and the committee had the power to fill the vacancy.

State v. Hogan, 24 Mont. 380; 62 Pac. 494.

State v. Hogan, 24 Mont. 401; 62 Pac. 684. Sections 1310, 1312 and 1316 of this code when read together, prescribe that certificates of nominations made by conventions, primaries or electors of candidates for offices to be filled by the voters of any division or district of the state greater than a county, must be filed with the secretary of state not more than 60 days, and not less than 30 days, before the day fixed by law for the election. Section 1316 refers only to certificates of original nominations made by conventions, primaries, or the requisite number of electors, and has nothing to do with committee nominations.

528. (§ 1317.) *Secretary of state to certify to county clerk names of persons nominated.*—Not less than twenty nor more than thirty days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

State v. Hogan, 24 Mont. 380; 62 Pac. 494.

529. (§ 1319.) *Candidate may decline ten days before election. In municipal election two days.*—Whenever any person nominated for public office, as in this chapter provided, shall at least ten days before election, except in the case of municipal elections, in writing, signed by him, notify the officer with whom the certificate nominating him is by this chapter to be filed, that he declines such nomination, such nomination shall be void. In municipal elections, such declination must be made at least two days before the election.

State v. Martin, 24 Mont. 408; 62 Pac. 590.

Stackpole v. Hallahan, 16 Mont. 45; 40 Pac. 81. This was originally section 11 of the act of March 13, 1889. The court held that this and the following section, prescribing certain facts to be stated in a certificate of nomination are not mandatory in a case where the nomination has been made, a certificate filed, the name placed on the ballot, and the candidate voted for and elected by a plurality of all the legal votes cast. An

election will not be declared void by reason of non-prejudicial defects in the nominating certificate.

The county committee nominated a person for county clerk to fill a vacancy but did not comply with the provisions of said sections 11 and 12. The defects were technical and, no objection having been made to them until after an honest election these provisions should be construed to be directory and the election should stand.

530. (§ 1320.) *Vacancies may be filled by further certificates.*—If any person so nominated dies before the printing of the tickets, or decline the nomination as in this chapter provided, or if any certificate of nomination is or becomes insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nomination. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee must thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination. The certificate so made must be executed in the manner prescribed for the original certificate of nomination, and has the same force and effect as an original certificate of nomination. When such certificate is filed with the secretary of state, he must, in certifying the nominations to the various county clerks, insert the name of the person who has thus been nominated to fill a vacancy in place of the name of the original nominee. And in the event he has already transmitted his certificate, he must forthwith certify to the clerks of the proper counties, the name and description of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted.

Stackpole v. Hallahan, 16 Mont. 45; 40 Pac. 81.

State v. Martin, 24 Mont. 408; 62 Pac. 590. This was originally section 12 of the act of March 13, 1889. A certificate that a person has been nominated by a

convention of the "Populist party" for district judge, when he had been nominated by the "People's party" is insufficient and occasions a vacancy, which the executive committee of the convention is authorized to fill.

531. (§ 1321.) *How questions submitted to electors may be certified.*—Whenever a proposed constitution or constitutional amendment, or other question is to be submitted to the people of the state for popular vote, the secretary of state must duly, and not less than thirty days before election, certify the same to the clerk of each county in the state, and the clerk of each county must include the same in the publication provided for in * § 1318 of this chapter. Questions to be submitted to the people of a county or municipality must be advertised as provided for nominees for office by said * § 1318.

* This section was repealed by Acts 1905, Chap. 91. It provided for a daily publication of notice for ten days of state and county elections, and three days for municipal elections.

State v. Hays, 31 Mont. 230; 78 Pac. 302. The failure through inadvertence of the officers of a state convention to include in their certificate of nominations the name of its candidate for attorney

general renders the certificate insufficient and occasions a vacancy which can be filled by the proper committee.

Tinkel v. Griffin, 26 Mont. 430; 68 Pac. 860.

532. (§ 1322.) *Errors how corrected.*—Whenever it appears by affidavit that an error or omission has occurred in the publication of the name or description of a candidate nominated for office, or in the printing of the ballots, the district court of the county may, upon application of any elector, by order require the county or municipal clerk to correct such error, or to show cause why such error should not be corrected.

State v. Fransham, 19 Mont. 288; 48 Pac. 6. This section authorizes the institution of proceedings to cure not alone clerical omissions and errors, but extends to defects by way of omission of names of candidates from the ballot, and

erroneous insertions of names of persons as candidates, who are not entitled to be so regarded, and whose names, unless stricken from the official ballot, will be erroneously printed thereon.

ARTICLE II.

PRIMARY ELECTIONS.

Section 533. Qualification of voter at primary election.

“ 534. *Who entitled to vote.*

“ 535. *Judges.*

“ 536. *Clerk.*

“ 537. *Challenges. Oath. Penalty.*

“ 538. *Fraudulent voting or counting.*

“ 539. *Unlawful interference.*

“ 540. *Penalties.*

533. (§ 1330.) *Qualification of voter at primary election.*—No person shall be entitled to vote at any caucus, primary meeting or election, held by any political party, except he be an elector of the state and county within which such caucus, primary meeting or election is held, and a legal resident of the precinct or district within which such caucus, primary meeting or election is held, and the limits of which said precinct or district are fixed and prescribed by the regularly chosen and recognized representatives of the party issuing the call for such caucus, primary meeting or election. [Act approved March 12, 1895.]

534. *Who entitled to vote.*—No person shall be entitled to vote at any caucus, primary meeting or election, who is not identified with the political party holding such caucus, primary meeting or election, or who does not intend to act with such political party at the ensuing election, whose candidates are to be nominated at such caucus or primary meeting. And no person, having voted at any primary meeting or election of any political party whose candidates are to be or have been nominated, shall be permitted to vote at the primary meeting or election of any other political party whose candidates are to be or have been nominated and to be voted for at the same general or special election. [Act approved March 6th, 1901, § 1.] (7th Sess. 115.)

535. (§ 1332.) *Judges.*—Three judges, who shall be legal voters in the precinct where such caucus or primary meeting is

held, shall be chosen by the qualified voters of said precinct or district, who are present at the opening of such caucus or primary meeting, and said judges shall be empowered to administer oaths and affirmations, and they shall decide all questions relating to the qualifications of those voting or offering to vote at such caucus or primary meeting, and they shall correctly count all votes cast and certify the results of the same. [*Act approved March 12, 1895.*]

536. (§ 1333.) *Clerk.*—The judges shall select one of their number who shall act as clerk, and the clerk must keep a true record of each and every person voting, with their residence giving the street and number and postoffice address. [*Act approved March 12, 1895.*]

537. *Challenges. Oath. Penalty.*—Any qualified voter may challenge the right of any person offering to vote at such caucus or primary meeting, and in the event of such challenge, the person challenged shall swear to and subscribe an oath administered by one of the judges, which oath shall be substantially as follows:

“I do solemnly swear that I am a citizen of the United States and am an elector of this county and of this precinct where this primary is now being held, that I have been and now am identified with the party, or that it is my intention bona fide, to act with the party, and identify myself with the same at the ensuing election, and that I have not voted at any primary meeting or election of any other political party whose candidates are to be voted for at the next general or special election.”

If the challenged party takes the oath above prescribed he is entitled to vote; provided, in case a person taking the oath as aforesaid, shall intentionally make false answers to any questions put to him by any one of the judges concerning his right to vote at such caucus or primary meeting or election, he shall, upon conviction be deemed guilty of perjury and shall be punished by imprisonment in the penitentiary for a term of not less than one year nor more than three years. [*Act approved March 6th, 1901, § 2.*] (*7th Sess. 115-116.*)

538. (§ 1335.) *Fraudulent voting or counting.*—It shall be unlawful for any judge of any caucus or primary meeting or primary election to knowingly receive the vote of any person who he knows is not entitled to vote, or to fraudulently or wrongfully deposit any ballot or ballots in the ballot box or take any ballot or ballots from the ballot box of said caucus or primary election, or fraudulently or wrongfully mix any ballots with those cast at such caucus or primary election, or knowingly make any false count, canvass, statement or return of the ballots cast or vote taken at such caucus or primary election. [*Act approved March 12, 1895.*]

539. (§ 1336.) *Unlawful interference.*—No person shall, by

bribery or other improper means or device, directly or indirectly, attempt to influence any elector in the casting of any ballot at such caucus or primary meeting, or deter him in the deposit of his ballot, or interfere or hinder any voter at such caucus or primary meeting in the full and free exercise of his right of suffrage at such caucus or primary meeting. [*Act approved March 12, 1895.*]

540. *Penalties.*—Any person or persons violating any of the provisions of this act, except as provided in § 537 (1334), shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than three months nor more than twelve months, or by both such fine and imprisonment in the discretion of the court. [*Act approved March 6th, 1901, § 3.*] (7th Sess. 116.)

CHAPTER IX.

BALLOTS AND VOTING.

- Section 541. Ballots, how printed and distributed.*
 “ 542. *County clerk to print ballots. Elector may vote for any person.*
 “ 543. *Municipal clerk to act in municipal elections.*
 “ 544. *Pasters to be printed and distributed where vacancy has been filled.*
 “ 545. *Form of ballots.*
 “ 546. *Number of ballots and stamps to judges of election. Stamp, what to contain.*
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 “ 559. *Putting ballot in box.*
 “ 560. *Record that person has voted, how kept.*
 “ 561. *List of voters.*
 “ 562. *Grounds of challenge.*

- Section 563. Proceedings on challenges for want of identity.*
“ 564. *Same on challenges for having voted before.*
“ 565. *Same on ground for conviction of crime.*
“ 566. *Challenges, how determined.*
“ 567. *Trial of challenges.*
“ 568. *If person refuses to be sworn, vote to be rejected.*
“ 569. *Proceedings upon determination of challenges.*
“ 570. *List of challenges to be kept.*
“ 571. *Persons not entitled to vote.*

541. (§ 1350.) *Ballots, how printed and distributed.*—All ballots cast in elections for public officers within the state (except school district officers), must be printed and distributed at public expense as provided in this chapter. The printing of ballots and cards of instruction for the elections in each county, and the delivery of the same to the election officers is a county charge, and the expense thereof must be paid in the same manner as the payment of other county expenses, but the expense of printing and delivering the ballots must, in the case of municipal elections, be a charge upon the city or town in which such election is held.

542. (§ 1351.) *County Clerk to print ballots. Elector may vote for any person.*—Except as in this chapter otherwise provided, it is the duty of the county clerk of each county to provide printed ballots for every election for public officers in which electors or any of the electors within the county participate, and to cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county clerk in the manner provided for in this chapter. Ballots other than those printed by the respective county clerks according to the provisions of this chapter must not be cast or counted in any election. Any elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, and must mark the same as provided in § 552 (1361), and such vote must be counted the same as if printed upon the ballot and marked by the voter, and any voter may take with him into the polling place any printed or written memorandum or paper to assist him in marking or preparing his ballot, except as otherwise provided in this title.

State v. Fransham, 19 Mont. 273; 48 Pac. 1.

543. (§ 1352.) *Municipal clerk to act in municipal elections.*—In all municipal elections the city clerk must perform all the duties prescribed for county clerks in this title.

544. (§ 1353.) *Pasters to be printed and distributed where vacancy has been filled.*—When any vacancy occurs before election day and after the printing of the ballots, and any person is nominated according to the provisions of this title to fill such

vacancy, the officer whose duty it is to have the ballots printed and distributed, must thereupon have printed a requisite number of pasters containing the name of the new nominee and must mail them by registered letter to the judges of election in the various precincts interested in such election, and the judges of election whose duty it is made by the provisions of this title to distribute the ballots, must affix such pasters over the name for which substitution is made, in the proper place on each ballot before it is given out to the elector.

State v. Hogan, 24 Mont. 403; 62 Pac. 685. No period is prescribed within which nominations made by a commit-

tee to fill a vacancy in nominations by a convention must be filed.

545. *Form of ballots.*—Ballots prepared under the provisions of this Chapter must be white in color and of a good quality of paper, and the names must be printed, thereon, in black ink. The ballots used in any one county must be uniform in size, and every ballot must contain the names of every candidate whose nomination for any special office specified in the ballot has been certified or filed according to the provisions of this Title, and no other names. The list of candidates of the several parties shall be placed in separate columns of the ballot, in such order as the authorities charged with the printing of the ballots shall decide. As near as possible the ballot shall be in the following form: (stub hereinafter provided for in this section.)

..... (Perforated line)

DEMOCRATIC.	REPUBLICAN.	LABOR PARTY.
For Governor <input type="checkbox"/> Joseph K. Toole <input type="checkbox"/>	For Governor <input type="checkbox"/> John E. Richards <input type="checkbox"/>	For Governor <input type="checkbox"/> Fred Whiteside <input type="checkbox"/>
For Lieut. Governor <input type="checkbox"/> Frank C. Higgins <input type="checkbox"/>	For Lieut. Governor <input type="checkbox"/> Alex. C. Botkin <input type="checkbox"/>	For Lieut. Governor <input type="checkbox"/> <input type="checkbox"/>
For Sec. of State <input type="checkbox"/> Geo. M. Hays	For Sec. of State <input type="checkbox"/> Louis Rotwitt	For Sec. of State <input type="checkbox"/> W. R. Allen

and continuing in like manner as to all candidates to be voted for at such election.

Every ballot must also contain the name of the party, or principal, which the candidate in the respective columns represent, as contained in the certificates of nomination: *provided*, however, that, where any person is nominated for the same office by more than one party or convention, his name shall be placed upon the ticket under the designation of the party which first nominated him, unless he declines, in writing, one or more of such nominations, or by written election indicates the party designation under which he desires his name to be printed, or if he was nominated by more than one party or convention at the same time shall, within the time fixed by law for filing certificates of nomination, file with the officer with whom his certificate of nomination is required to be filed a written election indicating the party designation under which he desires his name to be printed on the ballot, and it shall be so printed. If he shall fail or neglect to so file such an election, the officer with whom the certificate of nomination is required to be filed shall place his name under the designation of either of the parties by which he was nominated, but under no other designation whatever, and no person, who has been nominated by petition or otherwise, shall have his name printed upon the ticket if the same already appears under a party designation. Below the names of candidates for each office, there must be left a blank space large enough to contain as many written names of candidates as there are persons to be elected. There must be a margin on each side of at least half an inch in width, and a reasonable space between the names printed thereon, so that the voter may clearly indicate, in the way hereinafter provided, the candidate, or candidates, for whom he wishes to cast his ballot. The ballot shall be printed on the same leaf with a stub, and separated therefrom by a perforated line. The part above the perforated line, designated as the stub, shall extend the entire width of the ballot, and shall be of sufficient depth to allow the following instructions to voters to be printed thereon, such depth to be not less than two inches from the perforated line to the top thereof, upon the face of which stub shall be printed; in type known as brevier capitals, the following: "This ballot should be marked with an "X" in the square before the name of each person or candidate for whom the elector intends to vote. In cases of a ballot containing a constitutional amendment, or other question to be submitted to a vote of the people by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank spaces, or paste over another name, the name of any person for whom he wishes to vote, and vote for such person by marking an "X" in the square before such name." On the back of the stub shall be printed or stamped by the county clerk, or other officer whose duty it is to provide the ballots, the consecutive number of the

ballot, beginning with number "1", and increasing in regular numerical order to the total number of ballots required for the precinct. All of the official ballots of the same sort, prepared by any officer or board for the same balloting place, shall be of precisely the same size, arrangement, quality and tint of paper, and kind of type, and shall be printed in black ink of the same tint, so that when the stubs, numbered as aforesaid, shall be detached therefrom it shall be impossible to distinguish any one of the ballots from the other ballots of the same sort, and the names of all candidates printed upon the ballots shall be in type of the same size and character. Whenever the Secretary of State has duly certified to the county clerk any question to be submitted to the vote of the people, the county clerk must print the ballot in such form as will enable the electors to vote upon the question so presented in the manner in this Title provided. The county clerk must also prepare the necessary ballots whenever any question is required by law to be submitted to the electors of any locality, and any of the electors of the state generally, except that as to all questions submitted to the electors of a municipal corporation alone, the city clerk must prepare the necessary ballots. [*Act March 5, 1907, § 2.*] (*10th Sess. Chap. 88.*)

546. *Number of ballots to be provided for each precinct.*—The county clerk must provide for each election precinct in the county one and one-half times as many ballots as there are electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots to the number of one and one-half times the number of electors who voted at the last preceding election in the precinct. He must keep a record in his office, showing the exact number of ballots, with numbered stubs attached, that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this Section. [*Act March 5, 1907, § 3.*] (*10th Sess. Chap. 88.*)

547. (§ 1356.) *Clerk to deliver ballots and stamps to judges of election. Stamp, what to contain.*—Before the opening of the polls, the county clerk, or the city clerk in the case of municipal elections, must deliver to the judges of election of each election precinct which is within the county (or within the municipality in case of municipal election) and in which the election is to be held, at the polling place of the precinct, the proper number of ballots as provided for in § 546 (1355) of this chapter. He must also deliver to said judges a rubber or other stamp with ink pad for the purpose of stamping or designating the official ballots, as hereinafter provided. Said stamp must contain the words, "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and name and official designation of the clerk who furnishes the ballots.

The judge of election to whom the stamps and ballots are given pursuant to this section must be the same person who may be designated by the commissioners to post the notices required by § 506 (1266) of this code. But in case it be impracticable to deliver such stamps and ballots to such judge, then they may be delivered to some other one of the judges of election.

548. *Sufficient booths or compartments must be furnished.*—All officers upon whom is imposed by law the duty of designating the polling places, must provide in each polling place designated by them, a sufficient number of places, booths or compartments, each booth or compartment to be furnished with a door or curtain sufficient in character to screen the voter from observation, and must be furnished with such supplies and conveniences as shall enable the elector to prepare his ballot for voting, and in which electors must mark their ballots, screened from observation, and a guard rail so constructed that only persons within such rail can approach within ten feet of the ballot boxes, or the places, booths or compartments herein provided for. The number of such places, booths or compartments must not be less than one for every fifty electors, or fraction thereof, registered in the precinct. In precincts containing less than twenty-five registered voters, the election may be conducted under the provisions of this chapter without the preparation of such booths or compartments, as required by this section. [*Act approved March 7th, 1901.*] (7th Sess. 118.)

549. *Elector to cast his ballot without interference.*—No person other than electors engaged in receiving, preparing or depositing their ballots, or a person present for the purpose of challenging the vote of an elector about to cast his ballot, is permitted to be within said rail; and in cases of small precincts where places, booths or compartments are not required, no person engaged in preparing his ballot shall, in any way, be interfered with by any person, unless it be some one authorized by the provisions of this chapter, to assist him in preparing his ballot; nor shall any officer of election do any electioneering on election day. No person whatsoever, shall do any electioneering on election day, within any polling place, or any building in which an election is being held, or within twenty-five feet thereof; said space of twenty-five feet to be protected by ropes and kept free of trespassers; nor shall any person obstruct the doors or entries thereto, or prevent free ingress to and egress from said building. Any election officer, sheriff, constable or other peace officer is hereby authorized and empowered, and it is hereby made his duty, to clear the passage way, and prevent such obstruction, and to arrest any person so doing. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot after it is marked, to any person, in such a

way as to reveal the contents thereof, or the name of the candidate or candidates for whom he has marked his vote; nor shall any person solicit the elector to show the same; nor shall any person, except the judge of election, receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than one of the judges of election having charge of the ballots; nor shall any person other than such judge of election, deliver a ballot to such elector. No elector shall vote, or offer to vote, any ballot except such as he has received from the judges of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Every elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots, shall, before leaving the polling place, return such ballot to such judges. [*Act approved March 7th, 1901.*] (7th Sess. 118-119.)

550. *Expenses of providing places for election.*—The expense of providing such places or compartments, ropes and guard rails is a public charge, and must be provided for in the same manner as the other election expenses. [*Act approved March 7th, 1901.*] (7th Sess. 119.)

551. *Delivery of official ballots to elector.*—At any election the judges of election must designate two of their number whose duty it is to deliver ballots to the qualified electors. Before delivering any ballot to an elector, the said judges must print on the back, and near the top of the ballot, with the rubber or other stamp provided for the purpose, the designation “official ballot” and the other words on same, as provided for in Section 547 (1356) of this Chapter; and the clerks must enter on the poll lists the name of such elector and the number of the stub attached to the ballot given him. Each qualified elector must be entitled to receive from the judges one ballot. [*Act March 5, 1907, § 4.*] (10th Sess. Chap. 88.)

552. *Method of voting.*—On receipt of his ballot the elector must forthwith, without leaving the polling place and within the guard rail provided, and alone, retire to one of the places, booths or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an “X” in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an “X” in the square before the answer of the question, or amendment submitted. The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for such person by marking an “X” before such name. No elector is at liberty to use or bring into the polling place any

unofficial sample ballot. After preparing his ballot, the elector must fold it so the face of the ballot will be concealed and so that the endorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll list as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard rail, unless he be one of the persons authorized to remain within the guard rail for other purposes than voting. [Act March 5, 1907, § 5.] (10th Sess. Chap. 88.)

Dickerman v. Gelsthorpe, 19 Mont. 249; 47 Pac. 999. Where a ballot is marked with a cross at the head of a party list, containing no candidate for a certain office, and is marked with a cross opposite the name of a candidate for that office under another list, the ballot should be counted for all candidates under the party list and the candidate so marked. Where a ballot is marked with a cross at the head of a party list, and a cross is marked opposite the names of some, but not all the candidates under that list, and no other marks

are made, the ballot should be counted for all candidates under the list. Where a ballot is marked with a cross at the head of a party list containing the name of D. for county treasurer, and a cross is marked opposite the name of G., a candidate for the same office in another party list, the ballot should not be counted for D. or G.

State v. Fransham, 19 Mont. 292; 48 Pac. 7.

State v. Martin, 24 Mont. 406; 62 Pac. 589.

553. (§ 1362.) *Only one person to occupy booth, and no longer than five minutes.*—No more than one person must be allowed to occupy any one booth at one time, and no person must remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes, if the other booths or compartments are occupied.

554. (§ 1363.) *Spoiled ballot.*—Any elector who by accident or mistake spoils his ballot, may, on returning said spoiled ballot, receive another in place thereof.

555. *Judges may aid disabled elector.*—Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must upon request receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and such judges must certify on the outside thereof, that it was so marked with their assistance, and must thereafter give no information regarding the same.

The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write or of his blindness or physical disability, be unable to mark his ballot, must divulge to any one within the polling place the name of any candidate for whom he intends to vote, or ask, or receive the assistance of any person within the polling place in the preparation of his ballot. [*Act approved March 7th, 1901.*] (*7th Sess. 120.*)

Section not enumerated in title of act.

Lane v. Bailey, 25 Mont. 549; 75 Pac. 191.

556. (§ 1365.) *Voting, when to commence and continue.*—Voting may commence as soon as the polls are open, and may be continued during all the time the polls remain open.

557. (§ 1366.) *Manner of Voting.*—The person offering to vote must hand his ballot to the judges, and announce his name, and in incorporated cities and towns any such person must also give the name of the street, avenue or location of his residence, and the number thereof, if it be numbered, or such clear and definite description of the place of such residence as shall definitely fix the same.

558. (§ 1367.) *Announcement of voter's name.*—The judges must receive the ballot, and before depositing it in the ballot box must, in an audible tone of voice, announce the name, and in incorporated towns and cities the judges must also announce the residence of the person voting and the same must be recorded on each poll book.

559. (§ 1368.) *Putting ballot in box.*—If the name be found on the official register in use at the precinct where the vote is offered, or that the person offering to vote produce and surrender a proper registry certificate, and the vote is not rejected upon a challenge taken, the judges must immediately and publicly, in the presence of all the judges, place the ballot, without opening or examining the same, in the ballot box.

560. (§ 1369.) *Record that person has voted, how kept.*—When the ballot has been placed in the box, one of the judges must write the word "Voted" opposite the number of the person on the check list for the precinct.

561. (§ 1370.) *List of voters.*—Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the poll list and forms a part of the poll book of the precinct.

562. (§ 1371.) *Grounds of challenge.*—Any person offering to vote may be orally challenged by any elector of the county upon either or all of the following grounds:

1. That he is not the person whose name appears on the register or check list.

2. That he is an idiot or insane person.

3. That he has voted before that day.

4. That he has been convicted of a felony and not pardoned.

563. (§ 1372.) *Proceedings on challenges for want of identity.*—If the challenge is on the ground that he is not the person whose name appears on the official register, the judges must tender him the following oath:

“You do swear (or affirm) that you are the person whose name is entered on the official register and check list.”

564. (§ 1373.) *Same on challenges for having voted before.*—If the challenge is on the ground that the person challenged has voted before that day, the judges must tender to the person challenged this oath:

“You do swear (or affirm) that you have not before voted this day.”

565. (§ 1374.) *Same on ground for conviction of crime.*—If the challenge is on the ground that the person challenged has been convicted of a felony, the judges must tender him the following oath:

“You do swear (or affirm) that you have not been convicted of a felony.”

566. (§ 1375.) *Challenges, how determined.*—Challenges upon the grounds either:

1. That the person challenged is not the person whose name appears on the official register; or

That the person has before voted that day, are determined in favor of the person challenged by his taking the oath tendered.

2. A challenge upon the ground that the person challenged has been convicted of a felony and not pardoned must be determined in favor of the person challenged on his taking the oath tendered, unless the fact of conviction be proved by the production of an authenticated copy of the record; or by the oral testimony of two witnesses. If the person challenged asserts that he has been convicted of a felony and pardoned therefor, he must exhibit his pardon or a proper certified copy thereof to the judges, and if the pardon be found sufficient, the judges must tender to him the following oath: “You do swear that you have not been convicted of any felony other than that for which a pardon is now exhibited.” Upon taking this oath the person challenged must be permitted to vote if otherwise qualified, unless a conviction of some other felony be proved, as in this section provided for the proof of a conviction.

567. (§ 1376.) *Trial of challenges.*—Challenges for causes other than those specified in the preceding section must be tried

and determined by the judges of election at the time of the challenge.

568. (§ 4377.) *If a person refuses to be sworn, vote to be rejected.*—If any person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of residence, he must not be allowed to vote.

569. (§ 1378.) *Proceedings upon determination of challenges.*—If the challenge is determined against the person offering to vote, the ballot must, without examination, be destroyed by the judges in the presence of the person offering the same; if determined in his favor, the ballot must be deposited in the ballot box.

570. (§ 1379.) *List of challenges to be kept.*—The judges must cause each of the clerks to keep a list showing:

1. The names of all persons challenged.
2. The grounds of such challenges.
3. The determination of the judges upon the challenge.

571. (§ 1380.) *Persons not entitled to vote.*—No person is entitled to vote at any election mentioned in this title, except as otherwise provided in this title, unless his name on the day of the election appear in the “check lists,” on the copy of the official register furnished by the registry agents to the judges of election at the election precinct at which he offers to vote, or unless he produces and surrenders a county registry certificate or a state registry certificate, as provided in §§ 474 (1204) and 486 (1217) of this code, and the fact that his name so appears in the “check lists” and in the copy of the official register in the possession of the judges of election is *prima facie* evidence of his right to vote.

CHAPTER X.

CANVASSING AND RETURNING THE VOTE.

- Section 572. Canvass to be public and without adjournment.*
 “ 573. *Mode of canvassing.*
 “ 574. *Where ballots are in excess of names on check list.*
 “ 575. *What ballots must be counted.*
 “ 576. *Ascertaining the number of votes cast and persons voted for.*
 “ 577. *Tickets to be strung and enclosed in sealed envelopes.*
 “ 578. *Rejected ballots.*
 “ 579. *Return list.*
 “ 580. *Election returns by judges; how made.*
 “ 581. *One of the judges to keep certain papers and the ballot box.*

Section 582. Custody of election returns.

“ 583. *Delivery to county clerk.*

“ 584. *Filing of ballots and stubs by county clerk.*

“ 585. *Keeping returns pending contest.*

“ 586. *Disposition of returns prior to canvass of vote.*

“ 587. *Clerk to file in his office books, papers, etc.*

572. (§ 1400.) *Canvass to be public and without adjournment.*—As soon as the polls are closed the judges must immediately proceed to canvass the votes given at such election. The canvass must be public in the presence of bystanders, and must be continued without adjournment until completed and the result thereof is publicly declared.

573. (§ 1401.) *Mode of canvassing.*—The canvass must commence by a comparison of the poll lists from the commencement, and the correction of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots correspond with the number of names on the poll lists. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if on comparing the count with the poll lists and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected otherwise they must be counted.

574. (§ 1402.) *Where ballots are in excess of names on check list.*—If the ballots then are found to exceed in number the whole number of names on the poll list, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll list of the number of ballots so destroyed.

575. (§ 1403.) *What ballots must be counted.*—In the canvass of the votes any ballot which is not indorsed, as provided in this title, by the official stamp, is void and must not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice, is void and must not be counted; if part of a ballot is sufficiently plain to gather therefrom the elector's intention, it is the duty of the judges of election to count such part.

Dickerman v. Gelsthorpe, 19 Mont. 259; 47 Pac. 1003. This section was intended to modify certain sections, which have been amended or repealed

since this case was decided.

State v. Fransham, 19 Mont. 292; 48 Pac. 7.

576. (§ 1404.) *Ascertaining the number of votes cast and persons voted for.*—The ballots and poll lists agreeing or being

made to agree, the judges must then proceed to count and ascertain the number of votes cast for each person voted for. In making such count the ballots must be opened singly by one of the judges, and the contents thereof, while exposed to the view of the other judges, must be distinctly read aloud by the judge who opens the ballot. As the ballots are read each clerk must write at full length on a sheet to be known as a tally sheet, the name of every person voted for and of the office for which he received votes, and keep by tallies on such sheet the number of votes for each person. The tally sheets must then be compared and their correctness ascertained, and the clerks must, under the supervision of the judges, immediately thereafter set down, at length and in their proper places in the poll books, the names of all persons voted for, the offices for which they respectively received votes, and the total number of votes received by each person, as shown by the tally sheets. No ballot or vote rejected by the judges must be included in the count provided for in this section.

577. (§ 1405.) *Tickets to be strung and enclosed in sealed envelopes.*—The ballots, as soon as read, or rejected for illegality, must be strung upon a string by one of the judges, and must not thereafter be examined by any person, but must, as soon as all legal ballots are counted, be carefully sealed in a strong envelope, each member of the judges writing his name across the seal.

Chatham v. Mansfield, 1 C. App. 303; 82 Pac. 343.

578. (§ 1406.) *Rejected ballots.*—Any ballot rejected for illegality, must be marked by the judges, by writing across the face thereof, "Rejected on the ground of ———," filling the blank with a brief statement of the reasons for the rejection, which statement must be dated and signed by a majority of the judges.

579. (§ 1407.) *Return list.*—As soon as all the votes are counted and the ballots sealed up, the poll books must be signed and certified to by the judges and clerks of election substantially as in the form in § 519 (1302) of this code.

580. *Election returns by judges; how made.*—The judges must, before they adjourn, enclose in a strong envelope, securely sealed up and directed to the county clerk, the check lists, all certificates of registration received by them, one of the lists of the persons challenged, one of the poll books, one of the tally sheets and the official oaths taken by the judges and clerks of election; and must enclose in a separate package or envelope, securely sealed up and directed to the county clerk, all detached stubs from ballots voted, and all unused ballots with the numbered stubs attached; and must also enclose in a separate package or envelope, securely sealed up and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and endorse on the outside thereof "Ballots Voted."

Each of the judges must write his name across the seal of each of said envelopes or packages. [*Act March 5, 1907, § 6.*] (*10th Sess. Chap. 88.*)

581. (§ 1409.) *One of the judges to keep certain papers and the ballot box.*—The judges must select one of their number to retain, open to the inspection of all electors, for at least six months, the other list of persons challenged, the other tally sheet and poll book. The judge so selected must also retain the ballot box.

582. *Custody of election returns.*—The sealed envelope containing the check lists, certificates of registration, poll book, tally sheets, oaths of election officers; also the package or envelope containing the detached stubs and unused ballots, must, before the judges adjourn, be delivered to one of their number, to be determined by lot, unless otherwise agreed upon. [*Act March 5, 1907, § 7.*] (*10th Sess. 88.*)

583. (§ 1411.) *Delivery to county clerk.*—The judges to whom such packages are delivered must, within twenty-four hours, deliver them without their having been opened, to the county clerk, or convey the same, unopened, to the postoffice nearest the house in which the election for such precinct was held, and register and mail the same, duly directed to the said clerk.

Chatham v. Mansfield, 1 C. App. 303; 82 Pac. 343.

584. *Filing of ballots and stubs by county clerk.*—Upon the receipt of the packages by the county clerk, he must file the one containing the ballots voted and the one containing the detached stubs and unused ballots, and must keep them unopened and unaltered for twelve months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election, he must burn such packages, or envelopes, without opening or examining their contents. [*Act March 5, 1907, § 8.*] (*10th Sess. Chap. 88.*)

585. *Keeping returns pending contest.*—If, within twelve months, there is such a contest commenced, he must keep the packages or envelopes unopened and unaltered until it is finally determined, when he must, as provided in the preceding section, destroy them, unless the same are, by virtue of an order of the tribunal in which the contest is pending, brought and opened before it, to the end that evidence may be had of their contents, in which event the packages or envelopes and their contents are in the custody of such tribunal. [*Act March 5, 1907, § 9.*] (*10th Sess. Chap. 88.*)

586. *Disposition of returns prior to canvass of vote.*—The envelopes containing the check lists, certificates of registration, poll book, tally sheets and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the Board of County Commissioners meet for

the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened. [*Act. March 5, 1907, § 10,*] (*10th Sess. Chap. 88.*)

587. (§ 1415.) *Clerk to file in his office books, papers, etc.*—As soon as the returns are canvassed, the clerk must file in his office, the poll book, lists, and the papers produced before the board from the package mentioned in the next preceding section.

CHAPTER XI.

CANVASS OF RETURNS. DECLARATION OF RESULT. COMMISSIONS AND CERTIFICATES OF ELECTION.

Section 588. Meeting of county commissioners to canvass returns.

- " 589. *In case of absence certain county officers to act.*
- " 590. *Canvass to be postponed, when.*
- " 591. *Canvass to be public.*
- " 592. *Statement of the result to be entered of record.*
- " 593. *Declaration of result.*
- " 594. *Certificates issued by the clerk.*
- " 595. *Returns for joint members of house of representatives.*
- " 596. *How transmitted.*
- " 597. *Duty of clerk receiving such returns.*
- " 598. *State returns, how made.*
- " 599. *How transmitted.*
- " 600. *State canvassers, who comprise, when to meet.*
- " 601. *Messenger may be sent for returns. His duty and compensation.*
- " 602. *Governor to issue commission.*
- " 603. *Tie vote on state officers.*
- " 604. *Tie vote on judicial officers.*
- " 605. *Tie vote on representatives in congress.*
- " 606. *Defect in form of returns to be disregarded.*
- " 607. *Duty of secretary of state to print election laws.*
- " 608. *Penalties.*

588. (§ 1430.) *Meeting of county commissioners to canvass returns.*—The board of county commissioners of each county is ex-officio a board of county canvassers for the county, and must meet as a board of county canvassers at the usual place of meeting of the county commissioners within ten days after each election at twelve o'clock noon, to canvass the returns.

589. (§ 1431.) *In case of absence certain county officers to act.*—If at the time and place appointed for such meeting one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following

county officers, whose duty it is to act in the order named, to-wit: The treasurer, the assessor, the sheriff, so that the board of county canvassers shall always consist of three acting members. The clerk of the board of county commissioners is the clerk of the board of county canvassers.

590. (§ 1432.) *Canvass to be postponed, when.*—If at the time of meeting, the returns from each precinct in the county in which polls were opened have been received, the board of county canvassers must then and there proceed to canvass the returns; but if all the returns have not been received the canvass must be postponed from day to day until all of the returns are received, or until seven postponements have been had. If the returns from any election precinct have not been received by the county clerk within seven days after any election, it is his duty forthwith to send a messenger to the judges for the missing returns, who must procure such returns from the judges, or any of them, and return the same to the county clerk. Such messenger must be paid out of the county treasury, fifteen cents per mile in going and coming. If it appears to the board, by evidence, that the polls were not opened in any precinct, and no returns have been received therefrom, the board must certify to the same, and file such certificate with the county clerk, with the evidence, if any, who must enter the same in the minutes and in the statement mentioned in § 592 (1434.)

591. (§ 1433.) *Canvass to be public.*—The canvass must be made in public by opening the returns and determining therefrom the vote of such county or precinct for each person voted for, and for and against each proposition voted upon at such election, and declaring the result thereof. In canvassing, no returns must be rejected if it can be ascertained therefrom the number of votes cast for each person. The fact that the returns do not show who administered the oath to the judges or clerks of election, or a failure to fill out all the certificates in the poll books, or to do or perform any other act in making up the returns, that is not essential to determine for whom the votes were cast, is not such an irregularity as to entitle the board to reject the same, but they must be canvassed as other returns are.

592. (§ 1434.) *Statement of the result to be entered of record.*—The clerk of the board must, as soon as the result is declared, enter on the records of such board a statement of such result, which statement must show:

1. The whole number of votes cast in the county.
2. The names of the persons voted for, and the propositions voted upon.
3. The office to fill which each person was voted for.
4. The number of votes given at each precinct to each of such persons, and for and against each of such propositions.

5. The number of votes given in the county to each of such persons, and for and against each of such propositions.

593. (§ 1435.) *Declaration of result.*—The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or subdivision thereof.

594. (§ 1436.) *Certificates issued by the clerk.*—The clerk of the board of county commissioners must immediately make out and deliver to such person (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners.

People v. Shaver, 127 Cal. 350; 59 Pac. 784.

595. (§ 1437.) *Returns for joint members of house of representatives.*—When there are members of the house of representatives voted for, by the electors of a district composed of two or more counties, each of the clerks of the counties composing such district, immediately after making out the statement specified in § 592 (1434), must make a certified abstract of so much thereof, as relates to the election of such officers.

596. (§ 1438.) *How transmitted.*—The clerk must seal up such abstract, indorse it "election returns," and without delay transmit the same by mail to the clerk of the board of commissioners of the county which stands first in alphabetical arrangement in the list of counties composing such district.

597. (§ 1439.) *Duty of clerk receiving such returns.*—The clerk to whom the returns of a district are made, must on the twentieth day after such election, or sooner, if the returns from all the counties in the district have been received, open in public such returns, and from them and the statement of the vote for such officers in his own county:

1. Make a statement of the vote of the district for such officers, and file the same, together with the returns, in his office.

2. Transmit a certified copy of such statement to the secretary of state.

3. Make out and deliver or transmit by mail to the persons elected a certificate of election (unless it is by law otherwise provided.)

598. (§ 1440.) *State returns, how made.*—When there has been a general or special election for officers voted for by the electors of the state at large or for judicial officers (except justices of the peace), each clerk of the board of county canvassers, so soon as the statement of the vote of his county is made out and entered upon the records of the board of county commissioners, must make a certified abstract of so much thereof as relates to the votes given for persons for said offices to be filled at such election.

599. (§ 1441.) *How transmitted*.—The clerk must seal up such abstract, indorse it "Election Returns," and without delay transmit it by mail, registered, to the secretary of state.

600. (§ 1442.) *State canvassers, who comprise, when to meet*.—On the first Monday of December after the day of election, at twelve o'clock noon, the state auditor, state treasurer, and attorney general, who constitute a board of state canvassers, must meet in the office of the secretary of state and compute and determine the vote, and the secretary of state, who is secretary of said board, must make out and file in his office a statement thereof and transmit a copy of such statement to the governor.

601. (§ 1443.) *Messenger may be sent for returns. His duty and compensation*.—If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in § 592 (1434.) The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, after being allowed by the board of examiners, must be paid out of the general fund of the state treasury.

602. (§ 1444.) *Governor to issue commission*.—Upon receipt of such copy mentioned in § 600 (1442), the governor must issue commissions to the persons who from it appear to have received the highest number of votes for offices to be filled at such election. In case a governor has been elected to succeed himself, the secretary of state must issue the commission.

Bledsoe v. Colgan, 138 Cal. 36; 70 Pac. 924.

603. (§ 1445.) *Tie vote on state officers*.—In case of a tie vote for state officers, as specified in § 457 (1171) of this code, it is the duty of the secretary of state to transmit to the legislative assembly, at its next regular session, a certified copy of the statement showing the vote cast for the two or more persons having an equal and the highest number of votes for any state office.

604. (§ 1446.) *Tie vote on judicial officers*.—In case any two or more persons have an equal and highest number of votes for justice of the supreme court, or judge of a district court, the secretary of state must transmit to the governor a certified statement showing the vote cast for such person and thereupon the governor must appoint an eligible person to hold office, as in case of other vacancies in such offices.

605. (§ 1447.) *Tie vote on representatives in congress*.—In case of a failure by reason of a tie vote or otherwise, to elect

a representative in congress, the secretary of state must transmit to the governor a certified statement showing the vote cast for such persons voted for, and in case of a failure to elect, by reason of a tie vote or otherwise, the governor must order a special election.

606. (§ 1448.) *Defect in form of returns to be disregarded.*—No declaration of the result, commission or certificate must be withheld on account of any defect or informality in the return of any election, if it can, with reasonable certainty, be ascertained from such return what office is intended and who is elected thereto.

607. (§ 1449.) *Duty of secretary of state to print election laws.*—It is the duty of the secretary of state to cause to be published, in pamphlet form, a sufficient number of copies of this title, and such other provisions of law as bear upon the subject of elections, and to transmit the proper number to each county clerk, whose duty it is to furnish each election officer in his county with one of such copies.

608. (§ 1450.) *Penalties.*—The penalties for the violation of this title are prescribed in title IV., part I., of the penal code.

CHAPTER XII.

VOTING MACHINES.

- Section 609. State board of voting machine commissioners.*
- “ 610. *Specifications of machine required.*
- “ 611. *Counties and cities to use machines.*
- “ 612. *Payment for machines, how provided for.*
- “ 613. *Method of conducting elections.*
- “ 614. *Assistance to elector unable to record vote.*
- “ 615. *Ballots and instructions to voters.*
- “ 616. *City and county clerks to set up machines for use.*
- “ 617. *Irregular ballots.*
- “ 618. *Counting the votes.*
- “ 619. *Election returns.*
- “ 620. *Election laws applicable.*
- “ 621. *Penalty for neglect of duty by election officer.*
- “ 622. *Penalty for tampering with or injuring machines.*
- “ 623. *Penalty for violation of duty of judge of election.*
- “ 624. *Penalty for fraudulent returns or certificates.*
- “ 625. *Experimental use of machines. Defective machines.*

609. *State Board of Voting Machine Commissioners.*—The governor, secretary of state and state auditor and their successors in office, are hereby created and constituted the State Board of

Voting Machine Commissioners. It shall be the duty of said board to examine all voting or ballot machines in order to determine whether such machines comply with the requirements of this act, and can safely be used by voters at elections under the provisions of this act, and no machine or machines shall be provided or used at any election in this state unless the said machine or machines shall have received the approval of a majority of said board as herein provided. Said board may employ two qualified mechanics who shall be qualified electors of the State of Montana to examine said machines and assist said board in the discharge of its duties under this act, the compensation to be paid such qualified mechanics not to exceed the sum of ten dollars each for each day actually employed. Any machine or machines which shall have the approval of the majority of said board may be provided for in this act. The report of said board on each and every kind of voting machine shall be filed with the secretary of state within thirty days after examining the machine, and the secretary of state shall within five days after the filing of any report approving any machine or machines, transmit to the board of county commissioners, city council or other board of officers having charge and control of election in each of the counties and cities of this state, a list of the machines so approved. No machine or machines shall be used unless they shall have received the approval of the state board at least sixty days prior to any election at which such machine or machines are to be used. The compensation of the mechanics and all other expenses connected with the examination of any machine shall be paid, or caused to be paid, by the person or company submitting a machine for examination before the filing of the report thereon. The amount of such expenses shall be certified by the state auditor and paid to the state treasurer. [*Act approved March 8th, 1907, § 1.*] (10th Sess. Chap. 168.)

610. *Specifications of machines required.*—No machine or machine system shall be approved by the commission unless it be so constructed as to afford every elector a reasonable opportunity to vote for any person for any office or for or against any proposition for whom, or for or against which he is by law entitled to vote and enable him to do this in secrecy; and it must be so constructed as to preclude an elector from voting for any candidate for the same office or upon any question more than once, and from voting for any person for any office for whom he is not by law entitled to vote. The machine or machine system must admit of his voting a split ticket as he may desire. It must also be so constructed as to register or record each and every vote cast. For presidential electors one device may be provided for voting for all the candidates of one party at one time by the use of such device, opposite or adjacent to which shall be a ballot

on the machine containing the names of all of the candidates for all presidential electors of that party and a vote registered or recorded by the use of such device shall be counted for each of such candidates on said ballot. The machine must be constructed so that it cannot be tampered with or manipulated for any fraudulent purpose; and the machine must be so locked, arranged, or constructed that during the progress of the voting, no person can see or know the number of votes registered or recorded for any candidate. [*Act approved March 8, 1907, § 2.*] (*10th Sess. Chap. 168.*)

611. *Counties and cities to use machines.*—The boards of county commissioners of counties of the first class, and the city councils of cities of the first class shall and the board of county commissioners and the city and town councils of other counties, cities and towns, may adopt and purchase for use in the various precincts, any voting machine approved in the manner above set forth in this act, by the voting machine commission and none other. If it shall be impracticable to supply each and every election district with a voting machine or voting machines at any election following the adoption of such machines in a city, village or town, as many may be supplied as it is practicable to procure, and the same shall be used in such precinct of the municipality, as the proper officers may order. The proper officers of any city, village or town may, not later than the tenth day of September, in any year in which a general election is held, unite two or more precincts into one for the purpose of using therein at such election a voting machine, and the notice of such uniting shall be given in the manner prescribed by law for the change of election districts. [*Act approved March 8, 1907, § 3.*] (*10th Sess. Chap. 168.*)

612. *Payment for machines; how provided for.*—Payment for voting machines purchased may be provided by the issuance of interest bearing bonds, certificates of indebtedness, or other obligation, which will be a charge upon such county, city or town, such bonds, certificates, or other obligation may be made payable at such time or times, not exceeding ten years from the date of issue, as may be determined, but shall not be issued or sold at less than par. [*Act approved March 8, 1907, § 4.*] (*10th Sess. Chap. 168.*)

613. *Method of conducting elections.*—The room in which the election is held shall have a railing separating that part of the room to be occupied by the election officers from that part of the room occupied by the voting machine. The exterior of the voting machine and every part of the polling place shall be in plain view of the judges. The machine shall be so placed that no person on the opposite side of the railing can see or determine how the voter casts his vote, and that no person can so see or

determine from the outside of the room. After the opening of the polls the judges shall not allow any person to pass within the railing to that part of the room where the machine is situated except for the purpose of voting and except as provided in the next succeeding section of this act; and they shall not permit more than one voter at a time to be in such part of the room. They shall not themselves remain or permit any person to remain in any position that would permit him or them to see or ascertain how the voter votes or how he has voted. No voter shall remain within the voting machine booth or compartment longer than one minute and if he should refuse to leave it after that lapse of time he shall at once be removed by the judges. [*Act approved March 8, 1907, § 5.*] (*10th Sess. Chap. 168.*)

614. *Assistance to elector unable to record vote.*—If any voter shall, in the presence of the judges of election, declare that he is unable to read or write the English language or that by reason of physical disability or total blindness he is unable to register or record his vote upon the machine, he shall be assisted as provided by section of the statutes of Any person who shall deceive any elector in registering or recording his vote under this section, or who shall register or record his vote in any other way than as requested by such person, or who shall give information to any person as to what ticket or for what person or persons such person voted, shall be punished as provided in § 8130 (66) of the Penal Code. [*Act approved March 8, 1907, § 6.*] (*10th Sess. Chap. 168.*)

* Sec. 555 *Ante.*

615. *Ballots and instructions to voters.*—Ballots shall be provided by the respective city and county clerks for all the candidates to be voted for at an election and of suitable size to fit the space provided for that purpose on or in the machine and each shall be placed on or in the machine adjacent to or on the registering or recording device therefor. The ballots shall be placed on or in the machine in the order of arrangement provided by section 545 of the Political Code, except that they may be vertical columns or horizontal rows. Ballots for all questions must be provided in the same manner and must be arranged on or in the machine in the places provided for such purpose. The officers charged with the duty of providing ballots for any polling place, shall provide therefor five sample ballots which shall be exact copies of the official ballots which are caused to be printed by them, but on different colored paper from the official ballots; said sample ballots shall be arranged in the form of a diagram showing the entire form of voting machine as it will appear after the ballots are arranged thereon for voting on election day. In addition to said sample ballots, the proper officers may furnish

in connection therewith, instruction cards, diagrams of the front of the machine with ballots posted thereon, at least two of which shall also be posted up near the voting place, if furnished. All ballots shall be published as now provided by law. The ballots for the machines, and also sample ballots, shall be furnished the judges at least one day before the election. [*Act approved March 8, 1907, § 7.*] (*10th Sess. Chap. 168.*)

616. *City and county clerks to set up machines for use.*—The city or county clerk of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted, ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same, in the room where the election is to be held in the precinct, in time for the opening of the polls on election day. The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so designed. [*Act approved March 8, 1907, § 8.*] (*10th Sess. Chap. 168.*)

617. *Irregular ballots.*—In case a voting machine be adopted which provides for the registry or recording of votes for candidates whose names are not on the official ballot, such ballots shall be denominated irregular ballots. A person whose name appears on a ballot or on or in a machine or machine system, shall not be voted for, for the same office or on or in any irregular device for casting an irregular ticket, and any such vote shall not be counted, except for the office of presidential electors, and an elector may vote in or on such irregular device for one or more persons nominated by one party with one or more persons nominated by any or all other parties, or for one or more persons nominated by one or more parties with one or more persons not in nomination, or he may vote in such irregular device a presidential electoral ticket composed entirely of names of persons not in nomination. [*Act approved March 8, 1907, § 9.*] (*10th Sess. Chap. 168.*)

618. *Counting the votes.*—As soon as the polls of the election are closed, the judges shall immediately lock the machine, or re-

move the recording device so as to provide against voting, and open the registering or recording compartments in the presence of any person desiring to attend the same, and shall proceed to ascertain the number of votes cast for each person voted for at the election, and to canvass, record, announce and return the same as provided by law. [*Act approved March 8, 1907, § 10.*] (*10th Sess. Chap. 168.*)

619. *Election returns.*—The judges as soon as the count is completed and fully ascertained, shall seal, close, lock the machine, or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least thirty days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed “irregular ballots,” and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction; at the end of such six months, unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner. The officers heretofore charged with the duty of furnishing tally sheets and return blanks shall furnish suitable return blanks and certificates to the officers of election. Such return sheets shall have each candidate’s name designated by the same reference character that said candidate’s name bears on the ballot labels and counters, and shall make provision for writing in of the vote for such candidate in figures, and shall also provide for the writing in of the vote in words. Such return sheet shall also provide for the return of the vote on questions. It shall also have a blank thereon, on which can be marked the precinct, ward, etc., of which said return sheet bears the returns and the number and make of the machine used. Said return sheet shall also have a certificate thereon, to be executed before the polls open by the judges of election, stating that all counters except the protective counter, if any, and except as otherwise noted thereon stood at “000” at the beginning of the election, and that all of said counters had been carefully examined before the beginning of the election; that the ballot labels were correctly placed on the machine and correspond to the sample ballot, and such other statements as the particular machine may require; and shall provide for the signature of the election officers. Said return sheet shall also have thereon a second certificate stating the manner of closing the polls, the manner of verifying the returns, that the foregoing returns are correct, giving the indication of the public counter, and poll list, and protective counter,

if any, at the close of the election. Such certificate shall properly specify the procedure of canvassing the vote and locking the machine, etc., for the particular type of machine used, and such certificate shall be such that the election officers can properly subscribe to it as having been followed and shall have provision for the signature of the election officers. The election officers shall conform their procedure to that specified in the certificate, to which they must certify. The certificate and attest of the election officers shall appear on each return sheet. (*Act approved March 8, 1907.*) (*10th Sess. Chap. 168.*)

620. *Election laws applicable.*—All laws of this state applicable to elections where voting is done in another manner than by machine, and all penalties prescribed for violation of such laws shall apply to elections and precincts where voting machines are used in so far as they are not in conflict with the provisions of this Act. [*Act approved March 8, 1907, § 12.*] (*10th Sess. Chap 168.*)

621. *Penalty for neglect of duty by election officer.*—Any public officer or any election officer upon whom any duty is imposed by this Act or who shall willfully neglect or omit to perform any such duties, or do any act prohibited herein for which punishment is not otherwise provided herein, shall upon conviction, be imprisoned in the State Prison for not less than one year or more than three years or be fined in any sum not exceeding one thousand dollars, or may be punished by both such imprisonment and fine. [*Act approved March 8, 1907, § 13.*] (*10th Sess. Chap. 168.*)

622. *Penalty for tampering with or injuring machines.*—Any person not being an election officer who, during any election or before any election, after a voting machine has had placed upon it the ballots for such election, who shall tamper with such machine, disarrange, deface, injure or impair the same in any manner, or mutilate, injure, or destroy any ballot placed thereon or to be placed thereon or any other appliance used in connection with such machine, shall be imprisoned in the State Prison for a period of not more than ten years or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment. [*Act approved March 8, 1907, § 14.*] (*10th Sess. Chap. 168.*)

623. *Penalty for violation of duty by judge of election.*—Whoever, being a judge of election with intent to permit or cause any voting machine to fail to correctly register or record any vote cast thereon, tampers with or disarranges such machine in any way, or any part or appliance thereof, or who causes or consents to said machine being used for voting at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted, so that it will correctly register or record all votes cast thereon or who, for the purpose of defrauding or deceiving any

voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear upon said machine that votes cast for one ticket, candidate or proposition were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot on said machine, or any part thereof, or does any other like thing shall be imprisoned in the state prison not more than ten years or fined not exceeding one thousand dollars, or punished by both such fine and imprisonment. [*Act approved March 8, 1907, § 15.*] (*10th Sess. Chap. 168.*)

624. *Penalty for fraudulent returns or certificates.*—Any judge or clerk of an election who shall purposely cause the vote registered or recorded on or in such machine to be incorrectly taken down as to any candidate or proposition voted on, or who shall knowingly cause to be made or signed any false statement, certificate, or return of any kind, of such vote, or who shall knowingly consent to such things, or any of them being done, shall be imprisoned in the State Prison not more than ten years, or fined not more than one thousand dollars, or punished by both such fine and imprisonment. [*Act approved March 8, 1907, § 16.*] (*10th Sess. Chap. 168.*)

625. *Experimental use of machines. Defective machines.*—The proper officers authorized by this Act to adopt voting machines, may provide for the experimental use of an election in one or more precincts, of a machine approved by the Montana Voting Machine Commission without a formal adoption or purchase thereof and its use at such election shall be as valid for all purposes as if formally adopted. If from any cause a machine becomes unworkable, or unfit for use, voting shall proceed as in cases where machines are not used, and the County Clerk must furnish each voting place with the supply of ballots and other supplies required by the election laws to be used in the case of emergency herein provided for, and in such case only. [*Act approved March 8, 1907, § 17.*] (*10th Sess. Chap. 168.*)

CHAPTER XIII.

ELECTION FOR ELECTORS OF PRESIDENT AND VICE PRESIDENT.

Section 626. Electors when chosen.

“ 627. *Returns how made.*

“ 628. *Duty of governor.*

“ 629. *Meeting of electors.*

“ 630. *Vacancies, how supplied.*

“ 631. *Voting of electors and return.*

“ 632. *Separate ballots for president and vice president.*

“ 633. *Must make lists of persons voted for.*

Section 634. Result to be transmitted as provided by law of the United States.

“ 635. *Compensation of electors.*

“ 636. *How audited and paid.*

626. (§ 1460.) *Electors when chosen.*—At the general election in November preceding the time fixed by the law of the United States for the choice of president and vice president of the United States, there must be elected as many electors of president and vice president as this state is entitled to appoint.

627. (§ 1461.) *Returns how made.*—The votes for electors of president and vice president must be canvassed, certified to, and returned, in the same manner as the votes for state officers.

628. (§ 1462.) *Duty of governor.*—The governor must transmit to each of the electors a certificate of election, and on or before the day of their meeting deliver to each of the electors a list of the names of electors, and must do all other things required of him in the premises by any act of congress in force at the time.

629. (§ 1463.) *Meeting of electors.*—The electors chosen must assemble at the seat of government on the second Monday in January next after their election, at two o'clock in the afternoon.

630. (§ 1464.) *Vacancies, how supplied.*—In case of the death or absence of any elector chosen, or in case the number of electors from any cause be deficient, the electors then present must elect, from the citizens of the state, so many persons as will supply such deficiency.

631. (§ 1465.) *Voting of electors and return.*—The electors when convened must vote by ballot for one person for president and one for vice president, of the United States, one of whom at least is not an inhabitant of this state.

632. (§ 1466.) *Separate ballots for president and vice president.*—They must name in their ballots the persons voted for as president, and in distinct ballots the persons voted for as vice president.

633. (§ 1467.) *Must make lists of persons voted for.*—They must make distinct lists of all persons voted for as president and of all persons voted for as vice president, and of the number of votes given for each.

634. (§ 1468.) *Result to be transmitted as provided by law of the United States.*—They must certify, seal up, and transmit such lists in the manner prescribed by the constitution and laws of the United States.

635. (§ 1469.) *Compensation of electors.*—Electors receive the same pay and mileage as is allowed to members of the legislative assembly.

636. (§ 1470.) *How audited and paid.*—Their accounts therefor certified by the secretary of state, must be audited by the

state auditor, who must draw his warrants for the same on the treasurer, payable out of the general fund.

CHAPTER XIV.

ELECTIONS FOR MEMBERS OF CONGRESS.

ARTICLE I. ELECTION FOR SENATORS.

II. ELECTION FOR REPRESENTATIVES.

ARTICLE I.

ELECTION FOR SENATORS.

Section 637. Election for full term.

“ 638. *Election to fill vacancy.*

637. (§ 1480.) *Election for full term.*—Elections for senators in congress for full terms must be held at the regular session of the legislative assembly next preceding the commencement of the term to be filled.

638. (§ 1481.) *Election to fill vacancy.*—Elections to fill a vacancy in the term of a United States senator must be held at the session of the legislative assembly next succeeding the occurrence of such vacancy, or if the legislative assembly be in session at the time of the occurrence of the vacancy, then at such session.

ARTICLE II.

ELECTIONS FOR REPRESENTATIVES.

Section 639. When held.

“ 640. *Returns, how made.*

“ 641. *Certificates issued by governor.*

639. (§ 1490.) *When held.*—At the general election to be held in the year eighteen hundred and ninety-two and at the general election every two years thereafter, there must be elected for each congressional district one representative to the congress of the United States.

640. (§ 1491.) *Returns, how made.*—The vote for representative in congress must be canvassed, certified to and transmitted in the same manner as the vote for state officers.

641. (§ 1492.) *Certificates issued by governor.*—The governor must, upon the receipt of the statement mentioned in § 600 (1442), transmit to the person elected a certificate of his election, sealed with the great seal and attested by the secretary of the state.

TITLE III.

EDUCATION.

- CHAPTER I. STATE BOARD OF EDUCATION.
- II. STATE UNIVERSITY OF MONTANA.
- III. SCHOOL OF MINES OF MONTANA.
- IV. AGRICULTURAL COLLEGE OF MONTANA.
- V. STATE NORMAL SCHOOL.
- VI. STATE TEXT BOOK COMMISSION.
- VII. PUBLIC SCHOOLS.

CHAPTER I.

STATE BOARD OF EDUCATION.

- Section 642. Membership.*
- “ 643. *Appointment and term.*
- “ 644. *Oath.*
- “ 645. *Officers.*
- “ 646. *Quorum.*
- “ 647. *Meetings.*
- “ 648. *Powers and duties.*
- “ 649. *State diplomas.*
- “ 650. *Life diplomas.*
- “ 651. *Graduate of state normal school.*
- “ 652. *Revocation of diploma.*
- “ 653. *Expenses.*
- “ 654. *Membership.*
- “ 655. *Appointment and term.*
- “ 656. *Oath.*
- “ 657. *Officers.*
- “ 658. *Quorum.*
- “ 659. *Meetings.*
- “ 660. *Powers and duties.*
- “ 661. *State diplomas.*
- “ 662. *Life diplomas.*
- “ 663. *Graduate of state normal school.*
- “ 664. *Revocation of diploma.*
- “ 665. *Expenses.*

642. (§ 1510.) *Membership.*—The state board of education shall consist of eleven members, of which number the governor, state superintendent of public instruction and attorney general shall be ex-officio members. [Act approved March 10, 1895.]

Hilburn v. St. P. R. Co., 23 Mont. 243; 58 Pac. 556.

643. (§ 1511.) *Appointment and term.*—The governor shall appoint, by and with the advice and consent of the senate, the remaining eight members of the board. The persons first appointed under the provisions of this title shall hold office for the

following terms: Two shall be appointed for the term of two years from the first day of February, 1893; two for the term of three years from the first day of February, 1893; two for the term of four years from the first day of February, 1893, and two for the term of five years from the first day of February, 1893. The successors shall be appointed for the term of four years, and until their successors are appointed and qualified. [*Act approved March 11, 1895.*]

644. (§ 1512.) *Oath.*—The persons so appointed as members of the state board of education shall before entering upon the duties of their office, take and subscribe the constitutional oath of office prescribed for civil officers, which shall be filed in the office of the secretary of state. [*Act approved March 11, 1895.*]

645. (§ 1513.) *Officers.*—The governor shall be the president of said board, and the superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board. [*Act approved March 11, 1895.*]

State v. Barret, 26 Mont. 66; 66 Pac. 506. The state treasurer is the treasurer of the state board of education, and is liable, upon the order of the board, to pay out the income derived from the rents of lands granted by the United States in aid of the state agricultural college.

646. (§ 1514.) *Quorum.*—A majority of said board shall constitute a quorum for the transaction of business. [*Act approved March 11, 1895.*]

647. (§ 1515.) *Meetings.*—The board shall hold semi-annual meetings at the state capital on the first Monday in June and December in each year, and may hold special meetings at any time and place they may direct. The president and secretary of the board may also call special meetings of said board at any time and place, if in their judgment the necessity requires it. [*Act approved March 11, 1895.*]

648. (§ 1516.) *Powers and duties.*—The powers and duties of said board shall be as follows:

1. They shall have the general control and supervision of the state university and the various state educational institutions.

2. To adopt rules and regulations, not inconsistent with the constitution and laws of this state, for its own government, and proper and necessary for the execution of the powers and duties conferred upon them by law.

3. To prescribe rules and regulations for the government of the various state educational institutions.

4. To recommend to the legislature a uniform system of text books to be used in the public schools of the state below the high schools, in accordance with the provisions of this title.

5. To grant diplomas to graduates of the state university and other state educational institutions, upon the recommendation of the faculties thereof, and may confer honorary degrees upon per-

sons other than graduates, upon recommendation of the faculty of said institutions.

6. To adopt and use in the authentication of its acts an official seal.

7. To grant state diplomas, valid for six years, and life diplomas.

8. To keep a record of its proceedings.

9. To make an annual report on or before the first day of January, which shall be printed under the direction of the board.

10. To receive from the state board of land commissioners or other boards or persons, or from the government of the United States, any and all funds, incomes and other property to which any of the said institutions may be entitled, and to use and appropriate the same for the specific purpose of the grant or donation, and none other, and to have general control of all receipts and disbursements of any of said institutions.

11. To appoint and commission experienced teachers to act as instructors in county institutes. [*Act approved March 11, 1895.*]

State v. Barret, 26 Mont. 66; 66 Pac. 506. The state board of education has very extensive powers and duties, and has direct management and control of the affairs of the state agricultural college.

649. (§ 1517.) *State diplomas.*—State diplomas shall be issued to such persons, as have a good moral character, and who have held for one year and still hold in full force and effect, a first county certificate with the addition of English literature and mental philosophy, and who shall furnish satisfactory evidence of having been successfully engaged in teaching for at least five years. The term “five years” shall be construed to mean five years of not less than seven months each; that is, the applicant must have taught a part of each year for five years—not necessarily consecutive years—and in all thirty-five months, of which at least twenty-one months must have been in the public schools of Montana; *Provided*, That the state board of education shall have power to add such other studies to those enumerated in this section as they may deem necessary. [*Act approved March 11, 1895.*]

650. (§ 1518.) *Life diplomas.*—Life diplomas may be issued upon all and the same conditions as state diplomas, except that the applicant must pass a satisfactory examination upon the rudiments of botany, geology, political economy, zoology and general history, and must furnish satisfactory evidence of having been successfully engaged in teaching for at least ten years. “Ten years” shall be construed to mean ten years of not less than seven months each; that is, the applicant must have taught some part of each year for ten years—not necessarily consecutive years—and in all seventy months, of which at least twenty-one months must have been in the public schools of Montana. [*Act approved March 11, 1895.*]

651. (§ 1519.) *Graduate of state normal school.*—A state or life diploma may be granted to any graduate of the state normal school of Montana, or of the state university of Montana, when the said graduate furnishes satisfactory evidence of having successfully taught, after graduation, a public school in this state for sixteen school months. State or life diplomas may be granted to graduates of other educational institutions within or without the state, upon conditions established by the state board of education. [Act approved March 11, 1895.]

652. *Revocation of diplomas.*—Any State or Life Diploma may be revoked by the State Superintendent of Public Instruction for incompetency or immoral conduct on the part of the holder of it, or for any cause that would require the State Board of education to refuse to grant it if known at the time the Diploma was granted; but, before any such revocation, the holder shall be served with a written statement of the charges against him, and shall have an opportunity for defense before said State Board of Education. The State Superintendent may grant a temporary State Certificate, at any time, to any teacher whose experience, qualifications and credentials, in his opinion, entitle such a teacher to either a state or Life Diploma in Montana. Such temporary state certificate, however, shall be good and valid in any county in the state only until the next regular meeting of the State Board of Education; provided, however, that the holder of such certificate shall have it duly registered in the office of the County Superintendent of Schools of the county in which he is employed to teach before he begins teaching, and, provided, also, that such teacher shall pay, for such registration, the sum of One (\$1.00) Dollar into the Institute Fund of such county.—[Act approved February 8, 1907.] (10th Sess. Chap. 9.)

653. (§ 1521.) *Expenses.*—The members of said board shall receive no compensation for their services, but shall be allowed their actual traveling expenses incurred in attending the meetings of the board, which expenses and all other expenses, on the certificate of the secretary of the board, shall be audited and approved by the state board of examiners, and paid by warrant of the state auditor on the state treasurer. [Act approved March 11, 1895.]

654. (§ 1522.) *Membership.*—The state board of education shall consist of eleven members, of which number the governor, state superintendent of public instruction and attorney general shall be ex-officio members. [Act approved March 1, 1893.]

655. (§ 1523.) *Appointment and term.*—The governor shall appoint by and with the advice and consent of the senate, the remaining eight members of said board. The persons first appointed under the provisions of this act, shall hold their office for the following terms, viz.: Two shall be appointed for the

term of two years from the first day of February, 1893; two for the term of three years from the first day of February, 1893; two for the term of four years from the first day of February, 1893, and two for the term of five years from the first day of February, 1893. Their successors shall be appointed for the term of four years, and until their successors are appointed and qualified. [*Act approved March 1, 1893.*]

656. (§ 1524.) *Oath.*—The persons so appointed as members of the state board of education shall, before entering upon the duties of their office, take and subscribe the constitutional oath of office prescribed for civil officers, which shall be filed in the office of the secretary of state. [*Act approved March 1, 1893.*]

657. (§ 1525.) *Officers.*—The governor shall be the president of said board, and the state superintendent of public instruction shall be the secretary thereof. The state treasurer shall be the treasurer of the board. [*Act approved March 1, 1893.*]

658. (§ 1526.) *Quorum.*—A majority of the said board shall constitute a quorum for the transaction of business. [*Act approved March 1, 1893.*]

659. (§ 1527.) *Meetings.*—The board shall hold semi-annual meetings at the state capitol on the first Monday of June and December in each year, and may hold special meetings at any time and place they may direct. The president and secretary of the board may also call meetings of said board at any time and place, if in their judgment, necessity requires it. [*Act approved March 1, 1893.*]

660. (§ 1528.) *Powers and duties.*—The powers and duties of said board shall be as follows:

1. They shall have the general control and supervision of the state university and the various other state educational institutions.

2. To adopt rules and regulations not inconsistent with the constitution or laws of this state for its own government, and proper and necessary for the due execution of the powers and duties conferred upon them by law.

3. To prescribe rules and regulations for the government of the various state educational institutions.

4. To grant diplomas to graduates of the state university and other state educational institutions, upon the recommendation of the faculties thereof, and may confer honorary degrees upon persons other than graduates, upon recommendations of the faculty of any of said institutions.

5. To adopt and use in the authentication of its acts an official seal.

6. To grant state diplomas, valid for six years, and life diplomas.

7. To keep a record of the proceedings.

8. To make an annual report on or before the first day of January, which shall be printed under the direction of the board.

9. To receive from the state board of land commissioners or other boards, or persons, or from the government of the United States, any and all funds, incomes and other property to which any of the said institutions may be entitled and to use and appropriate the same for the specific purpose of the grant or donation, and none other; and to have general control of all receipts and disbursements of any of said institutions. [*Act approved March 1, 1893.*]

661. (§ 1529.) *State diplomas.*—State diplomas may be issued to such persons only as have a good moral character and who have held for one year and still hold in full force and effect a first grade county certificate, with the addition of English literature and mental philosophy and who shall furnish satisfactory evidence of having been successfully engaged in teaching for at least five years. The term “five years” shall be construed to mean, for five years of not less than seven months each; that is the applicant must have taught a part of each year for five years—not necessarily consecutive years—and in all thirty-five months, of which at least twenty-one months must have been in the public schools of Montana. [*Act approved March 1, 1893.*]

662. (§ 1530.) *Life diplomas.*—Life diplomas may be issued upon all and the same conditions as state diplomas, except that the applicant must pass a satisfactory examination upon the rudiments of botany, geology, political economy, zoology, and general history, and must furnish satisfactory evidence of having been successfully engaged in teaching for at least ten years. Ten years shall be construed to mean ten years of not less than seven months each; that is, the applicant must have taught some part of each year for ten years—not necessarily consecutive years—and in all seventy months, of which at least twenty-one months must have been in the public schools of Montana. [*Act approved March 1, 1893.*]

663. (§ 1531.) *Graduate of state normal school.*—A state or life diploma may be granted to any graduate of the state normal school of Montana or of the state university of Montana when the said graduate furnishes satisfactory evidence of having successfully taught, after graduation, a public school in this state for sixteen school months. State or life diplomas may also be granted to graduates of other educational institutions within or without the state, upon conditions established by said state board of education. [*Act approved March 1, 1893.*]

664. (§ 1532.) *Revocation of diploma.*—Any state or life diploma may be revoked by the state superintendent for incompetency or immoral conduct; but before any such revocation, the holder shall be served with a written statement of the charges

against him, and shall have an opportunity for defense before said state board of education. [*Act approved March 1, 1893.*]

665. (§ 533.) *Expenses.*—The members of said board shall receive no compensation for their services but shall be allowed their actual traveling expenses incurred in attending the meetings of the board, which expenses and all other expenses on the certificate of the secretary of the board, shall be audited and approved by the state board of examiners, and paid by warrant of the state auditor on the state treasurer. [*Act approved March 1, 1893.*]

CHAPTER II.

UNIVERSITY OF MONTANA.

- Section 666. University of Montana established.*
- “ 667. *Control and supervision of same.*
- “ 668. *No person to use the name of the university of Montana.*
- “ 669. *The university of Montana established.*
- “ 670. *Government. Officers.*
- “ 671. *Duty of state board of education.*
- “ 672. *Power of state board of education.*
- “ 673. *Officers of university. Report.*
- “ 674. *Objects of university.*
- “ 675. *Course of study.*
- “ 676. *Qualifications of students. Military instruction.*
- “ 677. *Charges for tuition.*
- “ 678. *Endowed professorships.*
- “ 679. *Appropriations for support of university.*
- “ 680. *Selection of site.*
- “ 681. *State university bonds.*
- “ 682. *Sale of bonds.*
- “ 683. *Funds pledged as security.*
- “ 684. *Disposition of proceeds of lands.*
- “ 685. *Notice of sale of bonds.*
- “ 686. *Use of proceeds of bonds.*
- “ 687. *University building commission.*
- “ 688. *State not liable on bonds.*

666. (§ 1540.) *University of Montana established.*—The university of Montana is established and located at Missoula, and has for its object, instruction and education in all the departments of science, literature, art, industrial and professional pursuits.

667. (§ 1541.) *Control and supervision of same.*—The control and supervision of the state university is vested in the state board of education, which must appoint a president and faculty, and other necessary officers, agents, employes, prescribe their

powers and duties, and establish for the government of the university, and for the instruction given therein, such rules not inconsistent with the laws of the state, as may be necessary.

668. (§ 1542.) *No person to use the name of the university of Montana.*—The state has the exclusive right to the use of the name "University of Montana," and no other institution of learning, or corporation, must use the name of "University of Montana," or "Montana University," or like name, and the attorney general is required to bring an action in the name of the state against any person, association or corporation using such or like name, for the purpose of dissolving the corporation, and recovering a sum not exceeding five hundred dollars, nor less than one hundred dollars, which is hereby made the penalty for a violation of the provisions of this section, from the person or association using such name.

669. (§ 1543.) *The university of Montana established.*—There is hereby established in this state, at the city of Missoula, an institution of learning under the name and style of "The University of Montana." [Act approved Feby. 17, 1893.]

670. (§ 1544.) *Government. Officers.*—The government of the university shall be vested in the state board of education. The manner of their appointment, their powers, duties, compensation and terms of office shall be as prescribed by law. The state treasurer shall be the treasurer of said board, and perform all the duties of such office, subject to such regulations as the state board may adopt, not inconsistent with his official duties; and he and his sureties shall be liable on his official bond as state treasurer for the faithful discharge of such duties. [Act approved Feby. 17, 1893.]

671. (§ 1545.) *Duty of state board of education.*—The state board of education shall have power, and it shall be their duty, to enact by-laws for the government of the university in all its departments; to elect a president of the university and in their discretion a vice president, and the requisite number of professors, instructors, officers and employes, and fix their salaries and terms of each; to determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no sectarian or partisan test shall ever be allowed or exercised in the appointment of professors, instructors, officers or employes of the university, or in the admission of students thereto, or for any purpose whatever. No instruction, either sectarian or religious or partisan in politics, shall ever be allowed in any department in the university. The state board of education shall have power to regulate the course of instruction and prescribe the text books and authorities to be used in all the departments, and may confer such degrees, and grant such diplomas as are usual in universities; and may confer the usual honorary

degrees upon other persons than graduates of the university in recognition of their learning, or devotion to literature, art or science, as may be recommended by the faculty of the university. [*Act approved Feby. 17, 1893.*]

672. (§ 1546.) *Power of state board of education.*—The immediate government of the several colleges of the university shall be intrusted to their respective faculties; but the state board of education shall have the control of all books, records, buildings, grounds, and all other property of the university. [*Act approved Feby. 17, 1893.*]

673. (§ 1547.) *Officers of university. Report.*—The president of the university shall be the president of the general faculty, and of the special faculties of the several departments or colleges and the executive head of the institution in all its departments. As such officer he shall have authority, subject to the state board of education to give general direction to the instruction, practical affairs and scientific investigations of the several colleges, and as long as the interests of the institution require it, he shall be charged with the duties of one of the professorships. He shall perform the duties of corresponding secretary for the university. He shall, annually, on or before the fifteenth day of December in each year, make a report to the state board of education, showing in detail the progress and condition of the university during the previous year, the number of professors and students in the several departments and classes, the nature and results of all important experiments and investigations, and such other matters, relating to the proper government, and educational work of the institution as he shall deem useful. [*Act approved Feby. 17, 1893.*]

674. (§ 1584.) *Objects of university.*—The object of the University of Montana shall be to provide the best and most efficient manner of imparting to young men and women, on equal terms, a liberal education and thorough knowledge of the different branches of literature, science and arts, with the varied applications, and to this end there shall be established the following colleges or departments, to-wit:—

1. A preparatory department.
2. A department of literature, science and the arts.
3. Such professional and technical colleges as may, from time to time, be added thereto or connected therewith. The preparatory department may be dispensed with, at such rate and in such wise as may seem just and proper to the state board of education. [*Act approved Feby. 17, 1893.*]

675. (§ 1549.) *Course of study.*—Such duties or courses of instruction shall be pursued in the preparatory department as shall best prepare the student to enter any of the regular colleges or departments of the university. The college or department of

literature, science and the arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to the industrial arts; a liberal course of instruction in the languages, literature, history and philosophy, and such other branches as the state board of education may prescribe. And, as soon as the income of the university will allow, and in such order as the demands of the public seem to require, the said courses of instruction in the sciences, literature and the arts shall be expanded into distinct colleges or departments of the university, each with its own faculty and appropriate title. [*Act approved Feby. 17, 1893.*]

676. (§ 1550.) *Qualifications of students. Military instruction.*—The university shall be open to students of both sexes, under such regulations and restrictions as the state board of education may deem proper. All able-bodied male students of the university may receive instruction and discipline in military tactics, the requisite arms of which shall be furnished by the state. [*Act approved Feby. 17, 1893.*]

677. (§ 1551.) *Charges for tuition.*—Tuition shall ever be free to all students who shall have been residents of the state for one year next preceding their admission, except in the law and medical departments, and for extra studies. The state board of education may prescribe rates for tuition for any student in the law or medical departments, or who shall not have been a resident aforesaid, and for teaching such studies. [*Act approved Feby. 17, 1893.*]

678. (§ 1552.) *Endowed professorships.*—Any person contributing a sum not less than fifteen thousand dollars shall have the privilege of endowing a professorship in the university, or any department thereof, the name and object of which shall be designated by the state board of education. [*Act approved Feby. 17, 1893.*]

679. (§ 1553.) *Appropriations for support of university.*—For the support and endowment of the university there is annually and perpetually appropriated:

1. The university fund income, and all other sums of money appropriated by law to the university fund income.
2. All tuition and matriculation fees.
3. All such contributions as may be derived from public or private bounty.

The entire income of all such funds shall be placed at the disposal of the state board of education, by transfer to the treasurer of said board and to be kept separate and distinct from the accounts of the state, and all other funds, and to be used solely for the support of the aforesaid colleges and departments of the university or connection therewith. But all means derived from other public or private bounty shall be exclusively devoted to the

specific objects for which they shall have been designated by the donor. [*Act approved Feby. 17, 1893.*]

680. (§ 1554.) *Selection of site.*—It shall be the duty of the state board of education within ninety days from the date of the passage of this act, if then organized, but if not organized then within ninety days from the organization of the said board, to select the site for the definite and permanent location of said university of Montana, which site shall be within three miles of the city limits of the city of Missoula; and they shall, at once, take steps or proceedings for procuring the title to the tract or tracts of land so selected by them, and they may, and are hereby empowered to enter into contracts, in the name of the state of Montana, for the purchase of said tract or tracts of land so selected, and may execute such obligations for the payment of the same as will mature when the probable income of the university fund will pay for the same. The state board of education are hereby authorized and empowered to accept, in the name of the state of Montana, such gifts of land and moneys as may be tendered for a university site or to aid in the purchase of said site; and they shall take the proper and necessary conveyances of said tract or tracts of land in the name of the state; *Provided*, That if such gifts consist of money only or money and land, and the land be not sufficient in amount or not appropriate for a university site, then they shall appropriate such gifts to the payment of said site, and if there be a surplus the same to become a part of the university fund; *Provided*, That said tract of land shall not be less than forty acres in extent. [*Act approved Feby. 17, 1893.*]

681. *State university bonds.*—The State Board of Land Commissioners of the State of Montana is hereby authorized to issue bonds to the amount of one hundred thousand dollars (\$100,000.00), the minimum denomination of which shall be fifty dollars (\$50.00) and the maximum shall be one thousand dollars (\$1,000.00) each; said bonds to be known as the State University Bonds, which shall bear date of July first 1897 to become due thirty (30) years after date and payable after twenty (20) years after date thereof; said bonds shall bear interest at the rate of not more than six (6) per cent per annum payable semi-annually on the first day of January and July of each year at the office of the State Treasurer of the State of Montana; said bonds shall run from the State Board of Land Commissioners of the State of Montana to bearer, and shall be signed by the State Board of Land Commissioners and countersigned by the Secretary of State, who shall attach his seal thereto. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 58-9.)

State v. Collins, 21 Mont. 448; 53 Pac. 1114. A warrant drawn by the land commissioners in favor of a contractor could not be passed on by the state board of examiners; the university bond fund is a trust fund, different from one arising from taxation, and not a fund over which said board has control.

682. *Sale of bonds.*—The bonds provided for in the first sec-

tion of this Act shall be issued and sold as soon as possible after the passage of this Act. [*Act approved March 4th, 1897, § 2.*] (*5th Sess. 59.*)

683. *Funds pledged as security.*—All funds realized from the sales of licenses to cut trees, leasing of said lands, or from the profits arising from the permanent fund to be created, as provided for by section 14 of an Act of Congress, approved February 22, 1889, entitled "An Act to provide for the division of Dakota into two States, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and State Governments, and to be admitted into the Union on an equal footing with the Original States and to make donations of public lands to such States" (said land being forty six thousand and eighty (46080) acres, granted to the Territory of Montana by the Act of February 18, 1881, and vested in the State of Montana by the Act of February 22, 1889) for the establishment and maintenance of a University; are hereby pledged as security for the payment of the principal and interest of the bonds authorized by this Act, and all revenue or profits derived from the said lands or said permanent fund to be created, or any of them, whether on account of lease, sales of licenses to cut trees, or otherwise, are hereby set apart and shall constitute a fund for the payment as hereinafter provided of the principal and interest of the said bonds, which bonds shall be a first lien on said University Bond Fund. [*Act approved March 4th, 1897, § 3.*] (*5th Sess. 59.*)

684. *Disposition of proceeds of lands.*—It shall be the duty of the State Treasurer to keep all moneys derived from the University lands hereinbefore mentioned in a separate fund, to be known and designated as the University Bond Fund and out of the moneys of such fund, he shall pay after approval by the State Board of Examiners:

First: The cost and expenses of issuing of the bonds herein provided for—

Second: The interest on the bonds herein authorized when due, and

Third: When bonds shall become payable, he shall call in and pay them as rapidly as the moneys in such fund will permit after providing for the interest. That in the event there shall not be sufficient funds in the University Bond Fund to pay the interest when due, the State Board of Examiners shall, by an order entered upon their minutes cause warrants to be issued on the University Bond Fund for the amount of the interest due, and the warrants so issued shall draw interest at the rate of six (6) per cent per annum, and said warrants shall be paid by the Treasurer as soon as sufficient funds accumulate in said fund to pay the same, and by reason of the delivery of the said warrants to the holders of the said bonds in satisfaction of the accrued interest, there shall be no default in the payment of the

interest. [*Act approved March 4th, 1897, § 4.*] (5th Sess. 59-60.)

685. *Notice of sale of bonds.*—It shall be the duty of the State Treasurer to give notice, by advertising for not less than two (2) weeks daily in one newspaper, published in the city of Helena, Montana, and in one newspaper published in the city of New York that he will on April 5th, 1897, sell one hundred thousand dollars (\$100,000.00) of the bonds herein authorized and will receive bids therefor and said bonds shall on said day be by him sold to the highest bidder: Provided, that the State Board of Education shall open all bids and shall have the right to reject any or all bids. If no bids are then received and accepted said bonds may then be sold afterwards at private sale, provided however, that none of the said bonds shall at any time be sold at less than par. [*Act approved March 4th, 1897, § 5.*] (5th Sess. 60.)

686. *Use of proceeds of bonds.*—The moneys derived from the sale of the said bonds shall be used to erect, furnish and equip buildings for the use and benefit of the University of Montana at the City of Missoula in said State, and shall by the State Treasurer be paid out on the warrants of the building commission of said University as hereafter provided. [*Act approved March 4th, 1897, § 6.*] (5th Sess. 60.)

687. *University Building Commission.*—There is hereby created a building commission to be composed of five persons to be appointed by the Governor of the State, no more than two of whom shall be of the same political party and all residents of the City of Missoula, who shall serve without compensation, whose duty it shall be to contract for the erection and furnishing of suitable buildings for the use and benefit of the University of Montana. The said commission shall have charge and supervision over the construction of said buildings and all things pertaining thereto; and shall have authority from time to time to draw their warrants on the Treasurer of the State of Montana for such sum or sums as may be due any contractor or employee engaged in and about the erection of the said buildings which warrants shall be paid by the said Treasurer out of any funds in his hands arising from the sale of bonds provided for in this act. Said Building Commission is hereby authorized to employ an architect and such other assistants as it may deem necessary in preparing the plans, specifications and superintending the construction of said building and the expense thereof shall be paid out of the funds as hereinbefore provided for the erection of said buildings, provided that all architects, superintendents and contractors shall be citizens of the State of Montana. Said Commission shall make report from time to time, to the stated meetings of the State Board of Education, of the progress of said work and the expenditures therefor. [*Act approved March 4th, 1897, § 7.*] (5th Sess. 60-1.)

688. *State not liable on bonds.*—The State of Montana shall in no wise be held liable for the payment of the bonds herein authorized or interest thereon. [Act approved March 4th, 1897, § 8.] (5th Sess. 61.)

CHAPTER III.

SCHOOL OF MINES.

- Section 689. *School of mines established.*
“ 690. *Control and management.*
“ 691. *School of mines established.*
“ 692. *Trustees, term; quorum.*
“ 693. *Appointment of trustees.*
“ 694. *Oath.*
“ 695. *Powers of trustees.*
“ 696. *Object of school.*
“ 697. *Site, appliances.*
“ 698. *Qualifications of students.*
“ 699. *Officers of board.*
“ 700. *Vacancies in board, how filled.*
“ 701. *Report.*
“ 702. *Location of school lands.*
“ 703. *Investment of donations.*
“ 704. *Bond of treasurer.*
“ 705. *Fees of professors.*
“ 706. *Debt prohibited.*
“ 707. *Faculty of school.*
“ 708. *Trustees may accept donations.*
“ 709. *State school of mines building commission.*
“ 710. *Member of commission not to be interested in contracts.*
“ 711. *Compensation and expenses of members.*
“ 712. *Plans for buildings.*
“ 713. *Bids and contracts for buildings.*
“ 714. *Commissioners may employ architect.*
“ 715. *Auditing and payment of claims.*
“ 716. *Equipment of school.*
“ 717. *Disposal of buildings when completed.*
“ 718. *Records of commission.*
“ 719. *School of mines building fund; bonds.*
“ 720. *Disposition of bonds.*
“ 721. *Creation of interest and sinking fund.*
“ 722. *Investment of sinking fund.*
“ 723. *Reimbursement of general fund.*
“ 724. *State Treasurer as custodian of fund.*
“ 725. *Disposition of proceeds of bond sale.*
“ 726. *Call of bonds for payment.*

Section 727. Expense of issuance of bonds.

“ 728. *Warrants for interest.*

“ 729. *State liable only to extent of lien on lands.*

689. (§ 1570.) *School of mines established.*—A school of mines of Montana is hereby established and located at Butte, and has for its object instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics, drawing, the laws of the United States, and of the state in reference to mining and the rights and duties of citizens in relation thereto. Such school of mines may be connected with the state university under such regulations as the state board of education may prescribe.

690. (§ 1571.) *Control and management.*—The control and supervision of such school is vested in the state board of education, which may prescribe all necessary rules therefor.

691. (§ 1572.) *School of mines established.*—The state school of mines is hereby established and declared to be a body corporate under the name of “Montana State School of Mines” and by that name may sue and be sued, may take and hold real or personal property by gift, bequest, devise, or purchase from the state, and may dispose of the same when authorized so to do by law. [*Act approved Feby. 17, 1893.*]

State Bank v. Barret, 25 Mont. 114; 63 Pac. 1030.

692. (§ 1573.) *Trustees, term, quorum.*—There shall be a board of trustees of said school of mines, to be composed of five persons, who shall, except as hereinafter provided, hold their office for a period of four years and until their successors are appointed and qualified. Any three of said board of trustees shall constitute a quorum for the transaction of business and the said board shall have such powers and perform such duties as are hereinafter specified. [*Act approved Feby. 17, 1893.*]

693. (§ 1574.) *Appointment of trustees.*—The state board of education shall within ninety days after the passage of this act, if such board shall then be organized, and if not so organized, shall within ninety days after their organization designate and appoint five suitable persons, at least three of whom shall be residents of Silver Bow county; and the persons so appointed by the state board of education shall be known as the trustees of the school of mines, three of whom shall hold office until January 1st, 1896, and two of whom shall hold office until January 1st, 1894, and their terms of office shall be distinctly designated by the state board of education. [*Act approved Feby. 17, 1893.*]

694. (§ 1575.) *Oath.*—Every trustee hereafter appointed shall, before entering upon the duties of his office, take an oath to support the constitution of the United States and the constitution of the state of Montana, and to faithfully perform the duties

of his said office of trustee to the best of his ability and understanding. [*Act approved Feby. 17, 1893.*]

695. (§ 1576.) *Powers of trustees.*—The said board of trustees shall have the control and management of the said school of mines, and of the property belonging thereto, subject to the laws of this state, and to such general control and supervision as shall be vested by law in the state board of education, and may make all needful by-laws and regulations for the government of said board, and for the management and government of said school of mines not inconsistent with the laws of this state. [*Act approved Feby. 17, 1893.*]

696. (§ 1577.) *Object of school.*—It shall be the object of such school of mines to furnish facilities for the education of such persons as may desire to receive special instruction in chemistry, metallurgy, mineralogy, geology, mining, mining engineering, mathematics, mechanics and drawing. [*Act approved Feby. 17, 1893.*]

697. (§ 1578.) *Site, appliances.*—The said board of trustees are hereby authorized to procure a suitable site at or near the city of Butte, in the county of Silver Bow and the state of Montana, for said school of mines, as hereinafter set out, and to erect suitable buildings thereon, and to procure such machinery and other appliances as may be necessary to carry out the object and intention of such institution and to promote the welfare thereof, whenever the funds provided for the establishment of said school of mines will warrant the same. [*Act approved Feby. 17, 1893.*]

698. (§ 1579.) *Qualifications of students.*—The said school of mines shall be open and free for instruction to all bona fide residents of this state without regard to sex or color, and, with the consent of said board students from other states or territories may receive an education thereat, upon such terms and at such rates of tuition as the board may prescribe. [*Act approved Feby. 17, 1893.*]

699. (§ 1580.) *Officers of board.*—The board shall, at their first meeting, and bi-ennially thereafter, elect one of their number chairman of said board, and shall also appoint a secretary and treasurer, either from their own number, or other suitable persons, as they may deem best, and prescribe their duties, and may at any time, in their discretion, remove such secretary or treasurer. [*Act approved Feby. 17, 1893.*]

700. (§ 1581.) *Vacancies in board, how filled.*—The state board of education, with the advice and consent of the senate shall, at each regular session of the legislative assembly, to be held after the year A. D. 1893, by appointment fill the vacancies in said board of trustees occurring either by the expiration of their term of office or otherwise; and any vacancy occurring in such board of trustees, when the legislative assembly is not in ses-

sion, may be temporarily filled by the state board of education, until the next meeting of the legislative assembly. [*Act approved Feby. 17, 1893.*]

701. (§ 1582.) *Report.*—The chairman of the board of trustees shall annually, on or before the tenth day of December in each year, make a report to the state board of education of the prosperity and condition of said school of mines, containing such statistical and other information pertaining thereto as he may deem necessary and useful, and also, a detailed statement of the receipts and expenses of such institution. [*Act approved Feby. 17, 1893.*]

702. (§ 1583.) *Location of school lands.*—The state board of land commissioners are hereby authorized and required to locate all the lands that have been donated by the United States to the state of Montana for the establishment and maintenance of a school of mines, and report to the next legislative assembly the number of acres so located, where situated, their character and estimated value, and shall make a similar report on or before the next meeting of the legislative assembly to the board of trustees of the school of mines, and also to the state board of education. [*Act approved Feby. 17, 1893.*]

703. (§ 1585.) *Investment of donations.*—All donations of money, securities or other property, shall be conveyed to the board of trustees of the school and invested as other funds of the school. [*Act approved Feby. 17, 1893.*]

704. (§ 1586) *Bond of treasurer.*—The said board of trustees shall require the treasurer of the school of mines to give such bonds as they may deem sufficient to protect said institution against loss of any funds which may come into his hands as such treasurer, conditioned for the safe keeping and faithful disbursement thereof, and the said treasurer of the school of mines shall not pay out any of the funds which shall come into his hands as such treasurer, except under the order of the chairman of the school of mines, countersigned by the secretary thereof. [*Act approved Feby. 17, 1893.*]

705. (§ 1587.) *Fees of professors.*—It shall be lawful for the professor or president of the school of mines, who shall be appointed by the said board of trustees, to charge and collect such reasonable fees for any and all assays and analysis made by them, as the said board may prescribe, an account of which shall be kept by said president and paid over monthly to the treasurer of said school of mines, which shall become a part of the school of mines fund. [*Act approved Feby. 17, 1893.*]

706. (§ 1588.) *Debt prohibited.*—The board of trustees are hereby prohibited from creating any debt as against the school of mines, buildings, machinery, or appliances, or in any manner incumbering the same, or of incurring any expense beyond their

ability to pay from the annual income of the school of mines for the current year. [*Act approved Feby. 17, 1893.*]

707. (§ 1589.) *Faculty of school.*—The board of trustees are empowered to select a president and faculty, and such professors and teachers as may be necessary to properly conduct the said school of mines, and the president so selected shall be the president of the faculty and board of teachers employed for said school. [*Act approved Feby. 17, 1893.*]

708. (§ 1590.) *Trustees may accept donations.*—The board of trustees are authorized to accept any donations of land, money or other property offered for the use and benefit of said school of mines, and to take proper deeds or conveyances of the same in their own name for the sole and exclusive use of said school, such donations, gifts or bequests, to be invested, used and disposed of as other property or funds provided for said school. [*Act approved Feby. 17, 1893.*]

709. (§ 1591.) *State school of mines building commission.*—For the purpose of erecting, furnishing and equipping buildings for the state school of mines at Butte City, Montana, there is hereby created a board to be known as the state school of mines commission. Said commission shall consist of five members, each a qualified elector, and not more than three belonging to any one political party, all of whom shall be forthwith appointed by the governor, by and with the advice and consent of the senate, and shall hold office until said buildings have been erected and equipped and accepted by the state as hereinafter provided, subject to removal by the governor, and each of whom shall forthwith give bond with two sureties, to be approved by the governor, in the sum of two thousand dollars, conditioned for the faithful performance of their duties. Vacancies in said board shall be forthwith from time to time filled by the governor, and three of said board shall constitute a quorum, with power to act, and the official place of business of said board at Butte City, Montana. [*Act approved March 7, 1895.*]

State Bank v. Barret, 25 Mont. 114; 63 Pac. 1030.

710. (§ 1592.) *Member of commission not to be interested in contracts.*—No member of the board shall be in any manner interested with any building contractor or shall submit any bid for the erection or the furnishing said buildings, neither shall he receive any commission, rebate, bonus, division of proceeds, or any other pecuniary advantage whatever in connection with said office, save the compensation hereinafter provided. [*Act approved March 7, 1895.*]

711. (§ 1593.) *Compensation and expenses of members.*—Each member of the board shall receive five dollars per day for each and every day the board is actually and necessarily assembled in the performance of its official duties, together with

his actual traveling expenses paid in going to and from his home to attend the session or sessions of the board. [*Act approved March 7, 1895.*]

712. (§ 1594.) *Plans for buildings.*—The state board of commissioners for the school of mines so appointed, are hereby authorized and directed to prepare plans and specifications for the erection of buildings for the said state school of mines not to exceed the amount of one hundred thousand dollars. [*Act approved March 7, 1895.*]

State Bank v. Barret, 25 Mont. 114; 63 Pac. 1030.

713. (§ 1595.) *Bids and contracts for buildings.*—Whenever the provisions of the preceding section have been fully complied with, the board of commissioners for the state school of mines shall advertise in not more than four nor less than two daily newspapers printed in the state, two of which must be in the county of Silver Bow, once each week for four consecutive weeks, a notice that it will receive sealed proposals and bids to construct such buildings on the site heretofore selected and in accordance with the plans and specifications so adopted by the commissioners for the state school of mines, reserving, however, the right to reject any and all bids and advertise anew.

The board must let the contract for the construction and erection of such building or buildings to the lowest responsible bidder, and the contractor or contractors shall execute a good and sufficient bond in double the amount of his or their bids to perform such contract for the construction and erection of such building or buildings in conformity with the plans and specifications aforesaid, which bond shall run to the state of Montana and be approved by the board of the school of mines commissioners. [*Act approved March 7, 1895.*]

State Bank v. Barret, 25 Mont. 115; 63 Pac. 1030.

714. (§ 1596.) *Commissioners may employ architect.*—The board of school of mines commissioners are hereby authorized to employ an architect and such assistants as it may deem necessary in preparing the plans and specifications for said building or buildings, and the expense thereof shall be paid out of the funds as hereinafter provided for the erection of said building or buildings. [*Act approved March 7, 1895.*]

715. (§ 1597.) *Auditing and payment of claims.*—All claims for the erection of said building or buildings shall be first approved by the school of mines commissioners and audited and allowed by the state board of examiners, and paid in the same mode and manner as claims against the state are paid; *Provided*, however, that such claims shall be paid out of the respective funds designated in this act, against which they may be chargeable. [*Act approved March 7, 1895.*]

State Bank v. Barret, 25 Mont. 115; 63 Pac. 1030.

716. (§ 1598.) *Equipment of school.*—Upon completion and acceptance of the buildings mentioned in this act, the board of school of mines commissioners shall equip and furnish said institution with supplies and apparatus as may be actually necessary in carrying on such institutions; *Provided*, however, that the amount so expended shall not exceed the sum of fifteen thousand dollars. [Act approved March 7, 1895.]

717. (§ 1599.) *Disposal of buildings when completed.*—Immediately upon the furnishing of such institution the state board of school of mines commissioners shall turn over to the state board of education all such buildings to be used thereafter solely and exclusively for the purposes for which they were created and established. [Act approved March 7, 1895.]

718. (§ 1602.) *Records of commission.*—The board shall keep a written record of all its official actions, and on the completion of its official functions said record shall be delivered by the governor to the secretary of state, who shall thereafter be the legal custodian thereof. [Act approved March 7, 1895.]

719. *School of mines building fund; bonds.*—The Board of School of Mines Commissioners and the State Board of Land Commissioners of the State of Montana are hereby authorized to issue and dispose of bonds for the purpose of erecting a building to be known as the "School of Mines Building" to be located in the City of Butte, Montana, under the following conditions and restrictions, to-wit:

First. The aggregate amount of bonds authorized by this Act shall not exceed the sum of One Hundred and Twenty Thousand Dollars (\$120,000.)

Second. The denomination of each bond shall be one hundred dollars, or any multiple thereof, but the maximum amount of any bond shall not exceed the sum of One Thousand Dollars.

Third. The term of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date at the option of the issuers.

Fourth. The bonds may bear any rate of interest not in excess of six per centum per annum, and the interest may be payable semi-annually.

Fifth. The principal and interest shall be payable at such place and in such manner as is designated in the bond.

Sixth. The Board of School of Mines Commissioners and the State Board of Land Commissioners shall prescribe the form of the bond, the bonds shall bear upon their face the words "School of Mines Building Bond of the State of Montana" and they shall be signed by the members of the Board of School of Mines Commissioners and the State Board of Land Commissioners and shall be countersigned by the Secretary and the Treasurer of the State and the seal of the State, shall be affixed to each bond, and

the bonds shall be registered in the office of the State Treasurer.

Seventh. The coupons representing the interest on the bonds shall be signed by the State Treasurer, or an engraved or lithographic fac-simile of the signature of the Treasurer may be affixed thereto provided it is so authorized in the bond. [*Act approved March 8th, 1897, § 1.*] (5th Sess. 124-5.)

720. *Disposition of bonds.*—The bonds provided for in this act shall be disposed of by the Board of School of Mines Commissioners and the State Board of Land Commissioners in such a manner as they shall deem it for the best interests of the State, provided, that no bond shall be disposed of for less than its par value. [*Act approved March 8th, 1897, § 2.*] (5th Sess. 125.)

721. *Creation of interest and sinking fund.*—To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as "The School of Mines Building Interest and Sinking Fund," into which shall be paid all sums of money realized from sales of lands, licenses to cut trees, leasing of lands, profits of any and all other sources by reason of the grants of lands by Congress to the State of Montana for the establishment and maintenance of a school of mines, as provided by sections 12 and 17 of an act of the United States Congress entitled "An Act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and State Governments, and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," approved February 22nd, 1889, and from said "School of Mines Building Interest and Sinking Fund" there shall, as the same become due and payable, be paid the interest on said bonds; and it is further provided, that it is the duty of the "State Board of Land Commissioners" whenever there are any funds in the said "School of Mines Building Interest and Sinking Fund" over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on said bonds, to invest such excess funds in the manner set forth and provided in section 4 of this act, and the amount so invested shall constitute a permanent fund to pay the principal of the said bonds; but all interest or profit derived from the investment shall be paid into the said "School of Mines Building Interest and Sinking Fund" and the principal and interest of the said bonds shall be a first lien upon said funds and all the lands granted and belonging to the State, for the purpose of establishing and maintaining a School of Mines. [*Act approved March 8th, 1897, § 1.*] (5th Sess. 125-6.)

722. *Investment of sinking fund.*—The State Board of Land Commissioners are hereby authorized and directed to create a permanent fund for the payment of the bonds authorized by

this act, from the following revenues, to-wit: Whenever the revenues in any year are sufficient to pay the interest on the said bonds and there shall be in excess thereof the sum of twenty-five hundred dollars, then any and all funds over and above the said sum of twenty-five hundred dollars shall be invested for the benefit of the "School of Mines Building Interest and Sinking Fund" as follows, to-wit:

First. In the bonds authorized by this act, provided they can be purchased at a cost not exceeding their par value and accrued interest.

Second. In any legally issued bonds of any county, school district, city or town of the State of Montana, provided they can be purchased at a cost not exceeding their par value and interest.

Third. In any legally issued General Fund Warrants of the State of Montana, or any legally issued warrants of county, city or town of the State of Montana, provided they can be purchased at a cost not exceeding their par value and accrued interest; and the said Board of Land Commissioners are hereby granted discretionary power in the selection and purchase of the securities hereinbefore described, as to the amount of each they shall purchase and conditions of general credit affecting the same. [*Act approved March 8th, 1897, § 4.*] (*5th Sess. 126.*)

723. *Reimbursement of general fund.*—It is hereby provided and set forth, that in the event the State of Montana shall at any time provide and pay the interest, or any part thereof, on the bonds authorized by this act, from the general fund of the State, or by any special appropriation made or tax levied therefor, then for any and all interest so paid, the State shall be reimbursed from the said "School of Mines Building Interest and Sinking Fund" by the payment of the amount so paid or due, whenever there is sufficient money in said "School of Mines Building Interest and Sinking Fund" to pay the same. [*Act approved March 8th, 1897, § 5.*] (*5th Sess. 126.*)

724. *State Treasurer as custodian of fund.*—The State Treasurer is hereby designated as the custodian of the funds provided by this act and he shall pay all warrants properly drawn by the "Board of School of Mines Commissioners" save and excepting as to the interest on the bonds, which he shall pay as the same becomes due and charge the amount thereof to the "School of Mines Building Interest and Sinking Fund" hereinbefore created. [*Act approved March 8th, 1897, § 6.*] (*5th Sess. 126-7.*)

725. *Disposition of Proceeds of bond sale.*—All moneys received from the sale of the bonds authorized by this act shall be paid to the State Treasurer, and shall constitute a special fund for the erection of the "School of Mines Building," and shall be disbursed by the State Treasurer on warrants properly drawn by the "Board of School of Mines Commissioners" and including

all warrants heretofore drawn by the "Board of School of Mines Commissioners" and registered prior to the passage of this act. [*Act approved March 8th, 1897, § 7.*] (5th Sess. 127.)

726. *Call of bonds for payment.*—Whenever any of the bonds authorized by this Act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance, beginning with the lowest number. [*Act approved March 8th, 1898, § 8.*] (5th Sess. 127.)

727. *Expense of issuance of bonds.*—The cost and expenses of issuing the bonds hereinbefore authorized may be paid out of the proceeds thereof, or be chargeable to the expense of the construction of the building. [*Act approved March 8th, 1897, § 9.*] (5th Sess. 127.)

728. *Warrants for interest.*—In the event there shall not at any time be sufficient money in the "School of Mines Building Interest and Sinking Fund" to pay the interest when due, the State Board of Land Commissioners and the Board of School of Mines Commissioners shall, by an order entered on their minutes or record books, cause warrants to be issued on the said "School of Mines Building Interest and Sinking Fund" for the amount of interest due, and the warrants so issued shall be registered in the office of the Treasurer of the State, and shall bear interest at the rate of six per centum per annum, and said warrants shall be paid by the State Treasurer whenever there is sufficient money accumulated in said fund to pay the same, and by reason of the delivery of said warrants to the holders of said bonds and the surrender of the interest coupons, there shall be no default in the payment of interest. [*Act approved March 8th, 1897, § 10.*] (5th Sess. 127.)

729. *State liable only to extent of lien on lands.*—Nothing in this Act shall be so construed as to in any wise hold the State of Montana liable for the payment of the bonds herein authorized, except as to the lien heretofore created against the lands and funds granted for the purpose of establishing and maintaining the School of Mines and which lien shall not be abridged, annulled or set aside until the bonds authorized by this act shall have been fully paid, together with the interest thereon and the Governor is hereby specially authorized and empowered to use all lawful means to enforce the provisions of this act. [*Act approved March 8th, 1897, § 11.*] (5th Sess. 127-8.)

CHAPTER IV.

AGRICULTURAL COLLEGE OF MONTANA.

Section 730. *Agricultural college established.*

" 731. *Control and management.*

" 732. *Establishment and location.*

- Section 733. *Selection of site.*
 " 734. *Control of college.*
 " 735. *Executive board.*
 " 736. *Officers of college.*
 " 737. *Secretary and treasurer of board.*
 " 738. *Agricultural experiment station.*
 " 739. *Management of station.*
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 " 742. *Montana agricultural college bonds.*
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730. (§ 1620.) *Agricultural college established.*—The agricultural college of Montana is established and located at Bozeman, and has for its object instruction and education in the English language, literature and mathematics, civil and mechanical engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed by the state

board of education, political, rural, and household economy, agriculture, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanical arts to practical agriculture in the field, and irrigation and the use of water for agricultural purposes. Such agricultural college may be connected with the state university, under such regulation as the state board of education may prescribe.

731. (§ 1621.) *Control and management.*—The control and supervision of such college is vested in the state board of education, which may prescribe all rules therefor.

732. (§ 1622.) *Establishment and location.*—The agricultural college of the state of Montana is established and located at the city of Bozeman, or within three miles of the corporate limits of said city, upon such tract, or tracts of land, conforming in the aggregate not less than eighty acres, and as much more as shall be selected by the state board of education, as hereinafter provided; and said college has for its leading objects and purposes, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the state board of education, and any subordinate boards by such state board appointed, may prescribe. [*Act approved Feby. 16, 1893.*]

733. (§ 1623.) *Selection of site.*—It shall be the duty of the state board of education, within ninety days from the date of the passage of this act, if then organized but if not organized then within ninety days from the organization of the said board, to select the site for the definite and permanent location of said agricultural college of Montana and agricultural experimental station, which site shall be at the city of Bozeman, or within three miles of the corporate limits of said city of Bozeman; and said state board of education shall at once take steps or proceedings for procuring the title to the tract or tracts of land so selected by them, and they may, and are hereby empowered to enter into contracts in the name of the state of Montana, for the purchase of said tract or tracts of land so selected, and may execute such obligations for the payment of the same as will mature when the probable income from the fund of said agricultural college and agricultural experimental station, or either of them, will pay for the same. The said state board of education are hereby authorized and empowered to accept in the name of the state of Montana, such gifts of land and money as may be tendered to aid in the purchase of said site, and whenever such gifts are sufficient in amount to secure or pay for said site they shall appropriate the same to that purpose, and take the proper and necessary conveyances of said tract or tracts of land in the name of the state. All lands and money acquired, as provided in this

section, shall be taken and held for the sole use and benefit of said agricultural college and said agricultural experimental station. [*Act approved Feby. 16, 1893.*]

734. (§ 1624.) *Control of college.*—The general control and supervision of such college is vested in the state board of education, which board may prescribe all rules therefor. [*Act approved Feby. 16, 1893.*]

735. (§ 1625.) *Executive board.*—The governor, by, and with the advice and consent of the state board of education, may designate and appoint an executive board, consisting of five members, at least three of whom shall be residents of the county wherein said institution is situated, which executive board shall have the immediate direction and control of the affairs of said college, subject only to the general supervision and control of said state board of education. Such executive board shall serve during the term of the state board of education, unless sooner removed. [*Act approved Feby. 16, 1893.*]

State Bank v. Barret, 26 Mont. 67; 66 Pac. 506. The state board of education is vested with the exclusive power to receive, invest manage and control the funds derived from the sale of the lands granted to the state for the use and support of the agricultural college, and the income therefrom is subject to the orders of the board to meet the current expenses of the institution.

736. (§ 1626.) *Officers of college.*—The executive board is authorized to choose and appoint a president and faculty of said college, who shall serve as such, for such time, and receive such compensation as the said executive board may prescribe, subject to the approval of the state board of education. [*Act approved Feby. 16, 1893.*]

737. (§ 1627.) *Secretary and treasurer of board.*—The executive board shall appoint a secretary thereof, who may also act as treasurer of said board and who may not be a member thereof, and such secretary and treasurer shall give bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to the said state board of education, to and for the use of said college, all moneys received by him as treasurer, in such sum as said state board of education may prescribe. [*Act approved Feby. 16, 1893.*]

738. (§ 1628.) *Agricultural experimental station.*—There is also located and established on the land so to be selected by the state board of education, in connection with said agricultural college, and under its direction an agricultural experimental station, to aid in acquiring and diffusing among the people of the state of Montana useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiments respecting the principles and application of agricultural science, which experimental station is established under and by virtue of the authority contained in the act of congress entitled

"An act to establish experimental stations in connection with the colleges established in the several states, under the provisions of an act approved July 2d, 1862, and the said acts supplementary thereto" approved March 2d, 1887, and the provisions, donations and benefits contained in said act of congress, and in all other acts of congress relating to agricultural experimental stations and agricultural colleges, now in force, and all acts supplementary thereto, or amendatory thereof, are by the state of Montana hereby accepted and adopted. [*Act approved Feby. 16, 1893.*]

State v. Barret, 26 Mont. 64; 66 Pac. 505.

739. (§ 1629.) *Management of station.*—Said agricultural experimental station is hereby placed under the supervision and control of the state board of education, and the executive or subordinate board or authority who may be by the governor, by and with the consent and advice of said state board of education, appointed. [*Act approved Feby. 16, 1893.*]

740. *Acceptance of grant.*—That the State of Montana hereby assents to the provisions of an Act of Congress, entitled: "An Act to provide for an increased annual appropriation for agricultural experiment stations and regulating the expenditure thereof," approved March 16, 1906, and hereby consents to receive the benefits thereof in the manner and form and for the purposes in said Act intended and provided. [*Act approved March 2, 1907, § 1.*] (10th Sess. Chap. 64.)

741. *Designation of station as beneficiary.*—That until otherwise provided by law the Agricultural Experiment Station, now established at Bozeman, Gallatin County, State of Montana, shall be the beneficiary of the funds in said Act mentioned, and shall use and disburse said funds only for the purposes and in the manner provided in said Act. The treasurer of the executive board of the Agricultural College and Agricultural Experiment Station, at said City of Bozeman, is hereby authorized to receive, and shall be the custodian of said funds, and he shall account for said funds, and make reports to the Secretary of Agriculture, as required by said Act of Congress. [*Act approved March 2, 1907, § 2.*] (10th Sess. Chap. 64.)

742. (§ 1630.) *Montana agricultural college bonds.*—The state board of land commissioners of the state of Montana, is hereby authorized to issue bonds to the amount of one hundred thousand dollars; the minimum denomination of such bonds shall be two hundred and fifty dollars, and the maximum denomination one thousand dollars each, said bonds to be known as the Montana agricultural college bonds, to bear date July 1, A. D. 1895, to become due twenty-five years after date, and payable after ten years after date thereof; said bonds shall bear interest at the rate of not more than six per cent. per annum, payable

semi-annually on the first day of January and July of each year at the office of the state treasurer of the state of Montana. Said bonds shall run from the state board of land commissioners of the state of Montana to bearer, and shall be signed by the state board of land commissioners and countersigned by the secretary of state, who shall attach his seal thereto. [*Act approved March 6th, 1895.*]

State v. Wright, 17 Mont. 78; 42 Pac. 103.

State v. Rice, 33 Mont. 390; 83 Pac. 878.

743. (§ 1631.) *Date of issuance and sale of bonds.*—The bonds provided for in the first section of this act § 742 (1630) shall be issued and sold as soon as possible after the passage of this act. [*Act approved March 6th, 1895.*]

744. (§ 1632.) *Security for payment of bonds.*—All funds realized from the sale or leasing of the lands (being fifty thousand acres) granted by the United States to the state of Montana for the establishment and maintenance of an agricultural college, under and by virtue of the provisions of § 17 of the act of congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," are hereby pledged as security for the payment of the principal and interest of the bonds authorized by this act, and all moneys or revenue derived from the said lands, or any of them, whether on account of sale, lease, sales of timber or otherwise, are hereby set apart and shall constitute a fund for the payment, as hereinafter provided, of the principal and interest of the said bonds, which bonds shall be a first lien on said agricultural college bond fund. [*Act approved March 6, 1895.*]

745. (§ 1633.) *Agricultural college bond fund.*—It shall be the duty of the state treasurer to keep all moneys derived from the agricultural college lands hereinbefore mentioned, in a separate fund, to be known and designated as the agricultural college bond fund, and out of the money in such fund he shall pay, after approval by the state board of examiners, (a) the cost and expense of issuing of the bonds herein provided for; (b) the interest on the bonds herein authorized, when due, and (c) when such bonds shall become payable, he shall call in and pay them as rapidly as the money in such fund will permit, after providing for the interest. That in the event there shall not be sufficient funds in the agricultural college bond fund to pay the interest when due, the board of state examiners shall, by an order entered upon their minutes, cause warrants to be issued on the agricultural college bond fund for the amount of the interest due; and

the warrants so issued shall draw interest at the rate of six per cent. per annum; and said warrants shall be paid by the treasurer as soon as sufficient funds accumulate in said fund to pay the same; and by reason of the delivery of said warrants to the holders of said bonds, in satisfaction of accrued interest, there shall be no default in the payment of interest. [*Act approved March 6, 1895.*]

746. (§ 1634.) *Advertisement of sale of bonds.*—It shall be the duty of the state treasurer, to give notice, by advertising for not less than two weeks, daily, in one newspaper published in the city of Helena, Montana, and in one newspaper published in the city of New York, N. Y., that he will on the second day of April, 1895, sell one hundred thousand dollars of the bonds herein authorized, and will receive bids therefor, and said bonds shall on said day be by him sold to the highest bidder. If no bids are then received, said bonds may then be sold afterwards at private sale; *Provided*, however, that none of said bonds shall at any time be sold at less than par. [*Act approved March 6, 1895.*]

State v. Wright, 17 Mont. 78; 42 Pac. 103.

747. (§ 1635.) *Disposition of proceeds of bonds.*—The money derived from the sale of said bonds shall be used to erect, furnish, and equip buildings for the use and benefit of the agricultural college of the state of Montana, at the city of Bozeman, in said state. [*Act approved March 6, 1895.*]

State v. Wright, 17 Mont. 78; 42 Pac. 103.

748. (§ 1636.) *Erection and furnishing of building.*—Immediately upon the receipt of the money, the proceeds of the sale of said bonds, the state treasurer shall turn over the same to the treasurer of the agricultural college, and it shall be disbursed by him, on orders of the executive board of the said agricultural college, in the erection and furnishing of a suitable building or buildings for the use and benefit of the agricultural college upon plans and specifications first submitted to and approved by the state board of education; *Provided*, however, that the general supervision of the construction and erection of such building or buildings and the furnishing and equipping thereof shall be under the control of the state board of education. [*Act approved March 6, 1895.*]

State v. Wright, 17 Mont. 77; 42 Pac. 103. The proper custodian of the proceeds of the bonds issued under section 1630, *supra*, is the treasurer of the state

agricultural college, who may, by mandamus, compel the state treasurer to pay over such proceeds.

749. (§ 1637.) *State not liable on bonds.*—Nothing in this act shall be so construed as to in any wise hold the state of Montana liable for the payment of the bonds herein authorized, or interest thereon. [*Act approved March 6, 1895.*]

State v. Rice, 33 Mont. 390; 83 Pac. 878.

750. *Refunding bonds.*—The State Board of Land Commissioners of the State of Montana is hereby authorized to issue bonds to the amount Eighty Thousand Dollars (\$80,000.00), for the purpose of taking up and redeeming the issue of One Hundred Thousand Dollars Agricultural College Bonds heretofore issued under Sections 742 (1630) to 749 (1637), inclusive, of the Political Code of Montana, now outstanding, and redeemable July 1, 1905. The minimum denomination of such bonds shall be Two Hundred and Fifty Dollars, (\$250.00), and the maximum shall be One Thousand Dollars (\$1,000.00) each. Said bonds shall be known as the Montana Agricultural College refunding Bonds, to bear date July 1, 1905, to become due and payable twenty (20) years after date, and to be redeemable ten (10) years after date thereof. Said Bonds shall bear interest at a rate not to exceed five (5) per cent per annum, and as much lower as the State Board of Land Commissioners may decide, payable semi-annually on the first day of January and July of each year, and both principal and interest shall be payable at the office of the State Treasurer of Montana. Said Bonds shall run from the State Board of Land Commissioners of the State of Montana to bearer, and shall be signed by the State Board of Land Commissioners, and countersigned by the Secretary of State of Montana, who shall attach his seal thereto; *provided*, however, that nothing in this Act shall be so construed as to hold the State of Montana liable for the payment of said bonds or the interest thereon. [Act approved March 1, 1905.] (9th Sess. Chap. 54.)

751. *Sale of bonds.*—The bonds provided for in the first Section of this Act shall be issued and sold at public or private sale as hereinafter provided, as soon as possible after the passage and approval of this Act. [Act approved March 1, 1905, § 2.] (9th Sess. Chap. 54.)

752. *Security for payment of bonds.*—All funds arising from the sale, or leasing of the lands, interest on deferred payments, and licenses to cut trees thereon, (being fifty thousand acres) granted by the United States to the State of Montana, for the establishment and maintenance of an agricultural college, under and by virtue of the provisions of Section 17, of the Act of Congress, approved February 22, 1899, entitled "An Act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," are hereby pledged as security for the payment of the principal and interest of the bonds authorized by this Act, and all moneys

or revenues derived from said lands, or any of them, whether on account of sales, leases, sale of timber, interest or otherwise, are hereby set apart and shall constitute a fund for the payment, as hereinafter provided, of the principal and interest of the said bonds, which refunding bonds shall be a first lien on said Agricultural College Bond Fund, after payment therefrom of said outstanding bonds as herein provided. [*Act approved March 1, 1905, § 3.*] (*9th Sess. Chap. 54.*)

753. *Duties of State Treasurer.*—It shall be the duty of the State Treasurer to keep all moneys derived from the Agricultural College Lands hereinbefore mentioned together with the proceeds of the sale of the bonds herein authorized to be issued, in a separate fund, to be known and designated as the Agricultural College Bond Fund, and out of the money in such fund he shall pay, after approval by the State Board of Land Commissioners.

a. The principal and accrued interest on the said outstanding issue of One Hundred Thousand Dollars Agricultural College Bonds, for the purpose of taking up and redeeming said bonds as hereinafter provided.

b. The cost and expense of the issuing and sale of the bonds herein provided for.

c. The interest on the bonds herein authorized.

d. When such refunding bonds become redeemable he shall call in and pay them as rapidly as the money in such fund will permit, after providing for the interest. In the event that there shall not be sufficient in the Agricultural College Bond Fund to pay the interest when due, the State Board of Land Commissioners shall, by an order entered on their minutes, cause warrants to be issued on the Agricultural College Bond Fund for the amount of the interest due, and the warrants so issued shall bear interest at the rate of five (5) per cent per annum; said warrants shall be paid by the Treasurer as soon as sufficient money accumulates in said fund applicable thereto to pay the same, and by reason of the delivery of said warrants to the holders of said bonds in satisfaction of accrued interest, there shall be no default in payment of the interest. [*Act approved March 1, 1905, § 4.*] (*9th Sess. Chap. 54.*)

754. *Sale of bonds, notice.*—It shall be the duty of the State Treasurer to give notice by advertising for not less than two weeks, daily, in one newspaper published in the City of Helena, and one newspaper published in the city of New York, that he will, on the tenth day of April, 1905, sell the Eighty Thousand Dollars of Refunding Bonds, hereby authorized and will receive bids therefor, and said bonds shall on said day be sold to the highest bidder, or to the person offering to take the same at the

lowest rate of interest, as may be directed by the State Board of Land Commissioners. If no bids are then received, or if none are accepted, said bonds may be sold afterwards at private sale: *Provided*, that the said Board of Land Commissioners shall have the right to open, receive and examine all bids for said bonds, and in its discretion accept or reject the same, *and provided, further*, that none of said bonds shall at any time be sold for less than par. [Act approved March 1, 1905, § 5.] (9th Sess. Chap. 54.)

755. *Disposition of proceeds.*—The moneys derived from the sale of sail refunding bonds shall be placed in the Agricultural College Bond Fund, out of which shall be paid the principal and interest necessary to take up and redeem the issue of One Hundred Thousand Dollars (\$100,000.00) of Montana Agricultural College bonds authorized by Section 742 (1630) to 749 (1637) Political Code of Montana, now outstanding, redeemable July 1, 1905. It shall be the duty of the State Treasurer to give notice to the owners, so far as known, of the said Montana Agricultural College Bonds authorized by Section 742 (1630) to 749 (1637), inclusive, Political Code, that he will, on the first day of July, 1905, pay the principal and accrued interest on the said bonds, and that interest will cease from and after the said date; and said treasurer shall on said date pay, take up, redeem, and, under the direction of the State Board of Land Commissioners shall cancel said bonds. If by reason of delay in selling the said bonds authorized by this Act, the money shall not be available on the first day of July, 1905, the State Treasurer shall call for, take up, redeem and cancel the said Montana Agricultural College Bonds at the earliest date practicable after such money shall be available. [Act approved March 1, 1905, § 6.] (9th Sess. Chap. 54.)

756. *Establishment of experimental substation in horticulture.*—The Executive Board of the Montana Agricultural college is hereby authorized and directed to establish a sub-station for the purpose of carrying on experimental work in horticulture, said station to be located at such point in the State of Montana as said Board may select; *Provided*, however, that the citizens or county wherein said sub-station is located shall donate to the State and give in fee simple not less than fifteen acres of suitable land including a perpetual water right for the same. [Act approved March 7, 1907.] (10th Sess. Chap. 146.)

757. *Billings experimental station.*—There is hereby established to be located within Three miles of the corporate limits of the City of Billings, Montana, on such land as the Governor and Secretary of State may select, a sub-station of the Agricultural Experimental Station provided for in Section 7 of an act of the legislature entitled "An Act providing for the location and establishment of the Agricultural College of the State of Mon-

tana, and an Agricultural Experimental Station in connection therewith, enumerating its objects and purposes, dedicating lands for the use of the same, providing for the government and control thereof, and accepting and adopting the provisions, donations and benefits contained in the Acts of Congress relating thereto," Approved February 16th, 1893. That said sub-station shall be under the general direction of the Experimental Station of the Agricultural College of the State of Montana, and its immediate direction shall be in charge of three persons to be appointed by the Governor by and with the consent of the Senate, Two of whom shall reside within ten miles of the sub-station. Said persons so appointed shall constitute a Board to be known as "Directors of the Billings Sub-Experimental Station." Said Board of Directors shall be at all times Subject to the direction and control of the said Experimental Station of the Agricultural College, and they shall serve without compensation. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 118.)

758. *Same work of sub-station.*—At said Sub-Station experimental work shall be conducted with a view to acquiring and diffusing useful and practical information on subjects connected with agriculture and to promote scientific investigation and experiments respecting the principle and application of agricultural science, under climatic and other conditions existing in the vicinity of the City of Billings. [*Act approved March 7, 1903, § 2.*] (8th Sess. Chap. 118.)

759. *Lands for sub-station.*—That for the purpose of securing title to the land selected by them for said sub-station, the Governor and Secretary of State are hereby authorized and empowered to either use the land heretofore acquired by the State for the Eastern State Prison, near Billings and described as:

Each and all of the Lots contained in each and all of the following named and numbered Blocks, to-wit: Blocks numbered Two Hundred and Ninety five (295), Two Hundred and Ninety Seven (297), Two Hundred ninety eight (298), Two Hundred and ninety nine (299), Three Hundred and ten (310), Three Hundred and Nineteen (319), Three Hundred and Twenty Seven (327), Three Hundred and Thirty one (331), Three Hundred and thirty two (332), and Three Hundred and twenty six (326); The Lots in each of said Blocks being platted and numbered consecutively from one (1) to twenty four (24) both inclusive, and the total number of Lots in all of said Blocks being two hundred and forty (240): Also Lots numbered Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18), in Block numbered Two Hundred and Ninety four (294); Also Lots numbered one (1), Two (2), Three (3), Four (4), five (5), six (6), seven (7),

eight (8), nine (9), ten (10), eleven (11), and twelve (12), in Block numbered Three Hundred and Nine (309); also Lots numbered Thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), in Block numbered Three Hundred and Thirty-three (333), also Lots numbered one (1), two (2), three (3), four (4), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), and fractional Lots numbered five (5), fifteen (15), and sixteen (16), in Block numbered Three hundred and twenty eight (328); Also Lots numbered twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), in Block numbered Three hundred and twenty (320); also all of the unplatted lots or fractions of lots in any and all of said Blocks numbered Three hundred and twenty eight (328), and Three hundred and twenty (320); all and singular the said lots and parts of lots, and all and singular the said Blocks and parts of Blocks being in the First Addition to the town of Billings, in the county of Yellowstone and State of Montana, according to the plat of the said First Addition to the said Town of Billings, now on file and of record in the office of the Clerk and Recorder of the said County of Yellowstone: also all and singular the several tracts, pieces or parcels of land contained in the following bounded and described parts of streets and avenues, and in the following described alleys, situate in the aforesaid town of Billings and in the aforesaid First Addition thereto, to-wit: All that portion of Ninth (9) Avenue North lying and being included between the extreme easterly line of North Nineteenth street and the extreme westerly Line of North Fifteenth (15th) street; all that portion of Tenth (10th) Avenue North lying and being included between the extreme Easterly Line of North Nineteenth Street and the extreme westerly line of North Fifteenth (15) Street; all that portion of Eleventh (11th) Avenue North lying and being included between the extreme westerly line of North Eighteenth Street and the extreme westerly line of North Fifteenth Street; all that portion of Twelfth Avenue North lying and being East of the extreme Westerly Line of North Eighteenth (18th) Street; all that portion of Thirteenth (13th) Avenue North lying and being East of the extreme Westerly line of North Eighteenth Street; all that portion of North Eighteenth Street lying and being north of the extreme southerly line of Ninth (9th) Avenue North; all that portion of North Seventeenth (17th) Street lying and being North of the extreme Northerly line of Eighth (8th) Avenue North, and all that portion of North Sixteenth (16th) Street lying and being North of the extreme Northerly line of Eighth (8th) Avenue North; also each and all

of the alleys contained in each and all of the following named and numbered blocks, to-wit:—Blocks numbered Three Hundred and Nineteen (319), Three hundred twenty (320), Three hundred twenty six (326), Three hundred twenty seven (327), Three hundred nine (309), Three hundred Ten (310), Three hundred thirty two (332), Three hundred and thirty one (331), Three hundred Thirty Three (333), Two Hundred Ninety Eight (298), Two Hundred Ninety seven (297), Two hundred ninety nine (299), Two hundred ninety four (294), and Two hundred and ninety five (295); each and all of the aforesaid Blocks and the alleys therein being in the First Addition to the aforesaid town of Billings, in the said County of Yellowstone and State of Montana, or if such land, in their judgment is not suitable for the purpose of such sub-experimental station, then they shall and are hereby empowered to convey such land described as aforesaid in exchange for such suitable tract of land for the sub-experimental station as they may deem of at least equal value. [*Act approved March 7, 1903.*] (8th Sess. Chap. 118.)

760. *Governor and secretary of state to select site.*—The Governor and Secretary of State shall make selection of the land provided for within sixty days after the approval of this Act, and within ninety days thereafter the State of Montana shall make provision for maintenance of said sub-experimental station. [*Act approved March 7, 1903, § 4.*] (8th Sess. Chap. 118.)

761. *Use of Bozeman funds prohibited.*—It shall be unlawful under any circumstances to use any funds appropriated for the Experiment Station at Bozeman for the support or maintenance of said sub-station. [*Act approved March 7, 1903, § 5.*] (8th Sess. Chap. 118.)

762. *State board of land commissioners may sell lands.*—The State Board of Land Commissioners is hereby empowered to sell and dispose of all lands acquired under and by virtue of the provisions of Chapter 118, Session Laws of 1903, (Section 759), upon the same terms and conditions as provided by law for the sale and disposition of all other state lands.—[*Act approved March 9, 1907.*] (10th Sess. Chap. 188.)

763. *Experimental sub-station located in Fergus county.*—That there is hereby established, to be located in Fergus County, Montana, on such land as may be donated to the State of Montana and accepted by the Governor and Secretary of State as suitable for the purpose, a Sub-station of the Agricultural Experimental Station provided for in Section 7 of an Act of the Legislative Assembly of the State Montana, entitled "An Act providing for the location and establishment of the Agricultural College of the State of Montana, and an Agricultural Experimental Station in connection therewith, enumerating its objects and purposes, dedicating lands for the use of the same, pro-

viding for the government and control thereof, and accepting and adopting the provisions, donations and benefits contained in the Acts of Congress relating thereto," approved February 16, 1893. (Section 738) Said Sub-station shall be under the direction of the Experimental Station of the Agricultural College of the State of Montana. [*Act approved March, 1907, § 1.*] (*10th Sess. Chap. 189.*)

764. *Authority of governor to accept site.*—The Governor and Secretary of State are hereby authorized to accept on behalf of the state, donation or donations of land for such purposes, provided such land be conveyed to the state in fee simple, and be free of all encumbrances and the title to the same be good. [*Act approved March, 1907, § 2.*] (*10th Sess. Chap. 189.*)

765. *Acceptance of donations of money and material.*—The said college is authorized to receive donations of money, implements, building materials, animals and supplies for the use of said Sub-station. [*Act approved March, 1907, § 4.*] (*10th Sess. Chap. 189.*)

766. *State Entomologist of Montana.*—The Entomologist of the Montana Agricultural College and Experimental Station shall be known as the State Entomologist of Montana. [*Act approved March 5, 1907, § 1.*] (*10th Sess. Chap. 103.*)

767. *Duties of State Entomologist.*—It shall be the duty of State Entomologist to conduct field investigations of the injurious insects of fruits, vegetables, grains, grasses, forage crops, including clover and alfalfa, root crops, shade trees, ornamental plants, and any other insects that may become injurious. When it becomes known to the State Entomologist that an outbreak of an insect has occurred in any part of the State, it shall be his duty, so far as is possible without conflicting with his other duties, to go to the scene of the outbreak or send a suitably qualified assistant. The State Entomologist or said Assistant shall determine the extent and seriousness of the outbreak, and, when necessary publish or make public demonstration of the best remedies to be employed. [*Act approved March 5, 1907, § 2.*] (*10th Sess. Chap. 103.*)

768. *Annual report.*—The Entomologist shall make an annual report to the Governor of the State, on or before the first day of January, which report shall be published by the Experiment Station as one of its regular bulletins, and shall contain a report of his work and expenditures under this Act. [*Act approved March 5, 1907, § 3.*] (*10th Sess. Chap. 103.*)

769. *Expenses.*—The State Entomologist shall receive no compensation for his services other than what he may receive from the Montana Agricultural College and Experiment Station, but the actual traveling expenses of himself or assistant, together with such office or laboratory expenses as result from the work contemplated under this Act, not to exceed Five Hundred Dollars,

(\\$500.00) per annum, shall be paid, and such sum is hereby annually appropriated for the purposes of this Act out of any moneys in the State Treasury, not otherwise appropriated. Upon the certification of the Secretary of the Executive Board of the Montana Agricultural College and Director of the Agricultural Experiment Station, the State Auditor is authorized to issue warrants to cover the traveling expenses of the State Entomologist while engaged in carrying out the provisions of this Act. [Act approved March 5, 1907, § 4.] (10th Sess. Chap. 103.)

CHAPTER V.

STATE NORMAL SCHOOL.

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| Section | 770. | <i>State normal school established.</i> |
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| " | 772. | <i>Establishment of school; name.</i> |
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| " | 789. | <i>Duty of auditor.</i> |
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770. (§ 1650.) *State normal school established.*—A state normal school is established and located at Dillon, and has for its object instruction and education, the art of teaching in all of its branches that pertain to a good public school education in the mechanical arts and in husbandry, and the fundamental laws of the United States and of the state. Such normal school may be connected with the state university, under such regulations as the state board of education may prescribe.

771. (§ 1651.) *Control and management.*—The control and supervision of such school is vested in the state board of education which may prescribe all necessary rules therefor.

772. *Establishment of school; name.*—That there be and is

hereby established within two miles of the corporate limits of the City of Dillon, Beaverhead County, Montana, a state normal school, which shall be called the "Montana State Normal College." [*Act February 25th, 1903, § 1.*] (*8th Sess. Chap. 29.*)

773. (§ 1653.) *Object of school.*—The object of said normal school shall be the instruction and training of teachers for the public schools of the state. [*Act approved February 23, 1893.*]

774. (§ 1654.) *Control and supervision.*—The control and supervision of such school is vested in the state board of education, which must elect a president, all teachers and employes, and prescribe all necessary rules therefor. [*Act approved February 23, 1893.*]

775. (§ 1655.) *Acceptance of public lands.*—The state board of education, herein mentioned, and their successors, shall receive, in the name of the state normal school hereby established, all the benefits, of whatsoever nature, that may be derived from the distribution and selection of lands contemplated in § 17, of an act of congress, approved February 22d, 1889, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington, to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states and to make donations of public lands to such states." [*Act approved February 23, 1893.*]

776. *Executive board; appointment and duties.*—The Governor, by and with the advice and consent of the State Board of Education, may designate and appoint an executive board, consisting of five members, at least three of whom shall be residents of the County wherein the said institution is situated, which executive board shall have the immediate direction and control of the affairs of said school, subject only to the general supervision of the State Board of Education, and such executive board shall serve during the term of four years, unless sooner removed by the Governor. *Providing* that no member of the Executive Board shall be permitted to have a personal interest in any contracts or purchases said board shall make for furnishing equipment or supplies. The Executive Board is authorized to choose and appoint a President and faculty of said school, who shall serve as such for such time and receive such compensation as the executive board may prescribe, subject however at all times to the approval of the State Board of Education. The Executive Board shall appoint a secretary thereof, who may also act as treasurer of the said board, and who may not be a member thereof, and such secretary and treasurer shall give a bond with good and sufficient surety for the faithful performance of his duties as such, and for the faithful accounting for and paying over to the said State Board of Education, to and for the use of said

school, all moneys received by him as treasurer, in such sums as said State Board of Education may prescribe. The said State Board of Education is hereby authorized and empowered to accept for and on account of, and for the use and benefit of the said Normal School, any bequests and donations to the State, made for the use and benefit of said school. The said State Board of Education shall, upon the recommendation of the faculty of said school, confer the degree of bachelor of pedagogy upon such persons as shall complete a four years course of study in said school, and the degree of master of pedagogy upon such persons, already holding the bachelor's degree, as shall complete a postgraduate course of one year in said school. [*Act February 25th, 1903, § 2.*] (8th Sess. Chap. 29.)
Chap. 29.)

777. *Limitation of act.*—Nothing herein contained shall in any wise effect or change the purpose or object of said school or the land grant made for the support thereof. [*Act February 25th, 1903, § 3.*] (8th Sess. Chap. 29.)

778. (§ 1657.) *State normal school bonds.*—The state board of land commissioners of the state of Montana is hereby authorized to issue bonds to the amount of fifty thousand dollars; the minimum demonination of such bonds shall be two hundred and fifty dollars, and the maximum denomination one thousand dollars each; said bonds to be known as the state normal school bonds, to bear date July 1, A. D. 1895, to become due twenty-five years after date, and payable after ten years after date thereof. Said bonds shall bear interest at the rate of not more than six per cent. per annum, payable semi-annually on the first day of January, and the first day of July, at the office of the state treasurer of the state of Montana. Said bonds shall run from the state board of land commissioners of the state of Montana to bearer, and shall be signed by the state board of land commissioners, and countersigned by the secretary of state, who shall attach his seal thereto. [*Act approved March 15, 1895.*]

779. (§ 1658.) *Date of issuance of bonds.*—The bonds provided for in the first section of this act (778) shall be issued and sold as soon as possible after the passage of this act. [*Act approved March 15, 1895.*]

780. (§ 1659.) *State normal school bond fund.*—All funds realized from the sale or leasing of the lands (being one hundred thousand acres) granted by the United States to the state of Montana for the establishment and maintenance of a state normal school under and by virtue of the provisions of § 17 of the act of congress, approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the People of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be ad-

mitted into the union on an equal footing with the original states, and to make donations of public lands to such states," are hereby pledged as security for the payment of the principal and interest of the bonds authorized by this act, and all moneys or revenues derived from the said lands or any of them, whether on account of sales, leases, sales of timber or otherwise, are hereby set apart and shall constitute a fund for the payment as hereinafter provided of the principal and interest of the said bonds, which shall be a first lien on said state normal school bond fund. [*Act approved March 15, 1895.*]

781. (§ 1660.) *Interest warrants.*—It shall be the duty of the state treasurer to keep all moneys derived from the state normal school lands hereinbefore mentioned in a separate fund, to be known and designated as the state normal school bond fund, and out of the moneys in such fund he shall pay, after approval by the state board of examiners, (a) the cost and expense of issuing of the bonds herein provided for; (b) the interest on the bonds herein authorized, when due and (c) when such bonds shall become payable, he shall call in and pay them as rapidly as the money in such fund will permit, after providing for the interest, and in the event there shall not be sufficient funds in the state normal school bond fund to pay the interest when due the board of state examiners shall, by an order entered upon their minutes, cause warrants to be issued on the state normal school bond fund for the amount of the interest due, and the warrants so issued shall draw interest at the rate of six per cent. per annum; and said warrants shall be paid by the treasurer as soon as sufficient funds accumulate in said fund to pay the same; and by reason of delivery of said warrants to the holders of said bonds in satisfaction of accrued interest, there shall be no default in the payment of interest. [*Act approved March 15, 1895.*]

782. (§ 1661.) *Advertisement of sale of bonds.*—It shall be the duty of the state treasurer to give notice by advertising for not less than two insertions in one newspaper published in the city of Helena, Montana, and in one newspaper published in the city of New York, N. Y., that he will on the second day of April, 1895, sell fifty thousand dollars of the bonds herein authorized, and will receive bids therefor, and said bonds shall on said day be by him sold to the highest bidder. If no satisfactory bids are then received, said bonds may then be re-advertised or may be sold afterwards at private sale; *Provided*, however, that none of said bonds shall at any time be sold at less than par. [*Act approved March 15, 1895.*]

783. (§ 1662.) *Disposition of proceeds of bonds.*—The money derived from the sale of said bonds shall be used to erect, furnish and equip buildings for the use and benefit of the state normal

school of the state of Montana, at the city of Dillon, in said state. [*Act approved March 15, 1895.*]

784. (§ 1663.) *Buildings of school.*—Immediately upon receipt of the money, the proceeds of the sale of said bonds, the state treasurer shall turn over the same to the treasurer of the state normal school, and it shall be disbursed by him, on orders of the executive board of the said state normal school, in the erection and furnishing of a suitable building or buildings for the use and benefit of the state normal school, upon plans and specifications first submitted to and approved by the state board of education; *Provided*, however, that the general supervision of the construction and erection of such building or buildings and the furnishing and equipping thereof shall be under the control of the state board of education, upon plans and estimates first submitted to and approved by the state board of education. [*Act approved March 15, 1895.*]

785. (§ 1664.) *State not liable on bonds.*—Nothing in this act shall be so construed as to in any way hold the state of Montana liable for the payment of the bonds herein authorized, or the interest thereon. [*Act approved March 15, 1895.*]

786. *Investment of State Normal School Bond fund.*—Whenever in the judgment of the state board of land commissioners the yearly income from leases and interest on deferred payments on land belonging to the State Normal School is sufficient to pay the interest on the bonded indebtedness against said land, or, whenever in the judgment of the Board the money in the State Normal Bond Fund can be invested without impairing the ability of the Fund to meet the interest on said bonded indebtedness it shall be the duty of said Board to invest the money in said Normal School Bond Fund in any state, County, City, or School District securities in this State which in its judgment is a safe investment, *provided*, that said securities must become due on or before the date such bonded indebtedness shall become due.

The board may make its bid in the same manner as private persons and under no restrictions other than those imposed upon private persons seeking investment therein. [*Act approved March 3rd, 1903, § 1.*] (8th Sess. Chap. 47.)

787. *Same.*—That the State Board of Land Commissioners of the State of Montana may, and they are hereby directed and authorized to invest any and all sums of money now in the State Normal School Bond Fund not necessary for the payment of interest on Bonds outstanding against said Fund, in such securities, at such rate of interest, for such time, and under such conditions as such Board may deem advisable. [*Act approved March 5, 1903, § 1.*] (8th Sess. Chap. 91.)

788. *Redemption of bonds.*—That said Board be, and it is hereby authorized and directed to use and apply any and all

moneys in said Bond Fund as may be deemed advisable and not necessary for the payment of interest on Bonds outstanding against said Fund, to the purchase and redemption of all or any of such Bonds heretofore issued and now outstanding against said Fund, which can be purchased at a fair and satisfactory price, and before the period when said Bond shall become due and payable by operation of law, and to pay for said Bonds such premium, or sums, in addition to the par value of same as such Board may, in their discretion deem for the best interests of said Fund. *Provided*, that said Board shall at no time pay, or cause to be paid for said outstanding Bonds or any thereof, a sum larger than the par value thereof and the interest yet to accrue thereon in addition to the said par value. [*Act approved March 5th, 1903, § 2.*] (8th Sess. Chap. 91.)

789. *Duty of auditor.*—The State Auditor is hereby authorized and directed to draw his warrants on the said Bond Fund for the payment of any and all of said Bonds so purchased by reason thereof. [*Act approved March 5th, 1903, § 3.*] (8th Sess. Chap. 91.)

790. *Securities, how paid for.*—Whenever the Board has purchased any securities as Provided in Section 1 of this Act (§ 786) and the same are duly executed and delivered to the President of the Board, the Board shall direct the State Auditor to draw his warrant upon the State Treasurer for the amount thereof, specifying the Fund upon which and the person in whose favor the said warrant shall be drawn, whereupon the State Auditor shall draw a warrant upon the State Treasurer accordingly, which warrant shall be delivered to the President of the State Board of Land Commissioners and shall be paid by the State Treasurer upon the delivery to him of the purchased securities; provided that the State Treasurer shall purchase interest bearing warrants issued against any Fund whenever ordered so to do by the State Board of Land Commissioners. [*Act approved March 3rd, 1903, § 2.*] (8th Sess. Chap. 47.)

CHAPTER VI.

STATE TEXT BOOK COMMISSION.

- Section 791. Appointment of State Text Book Commission.*
“ 792. *Organization of commission.*
“ 793. *Meeting of commission.*
“ 794.. *Contracts for supplying text books.*
“ 795. *Selection of text books.*
“ 796. *Contracts and agreements.*
“ 797. *Bond for performance of contracts.*
“ 798. *Forfeiture of contract for nonperformance.*
“ 799. *Price list of books to be printed and distributed.*

Section 800. Penalty for using other than selected books.

“ 801. *Annual report as to the use of books.*

“ 802. *Election upon proposition to supply free text books.*

“ 803. *Special levy to provide free text books.*

“ 804. *Compensation of text book commissioners.*

791. *Appointment of state text book commission.*—The governor is hereby authorized to nominate and appoint a state text-book commission consisting of seven members, five of whom shall be persons actively engaged in the common public school work of the state at the time of their appointment. The terms of three members of said Commission first appointed shall be for a period of three years each, and the terms of four members of said commission first appointed shall be for a period of five years each; and thereafter at the expiration of the respective terms of the members first appointed their successors shall be appointed by the Governor for a term of five years. If a vacancy occurs during the terms of any of the members of said commission by reason of death, resignation or otherwise, the governor shall make appointment to fill such vacancy and the person so appointed shall hold office until the expiration of the term for which the person he succeeds was appointed. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 132.)

792. *Organization of commission.*—The Commission at its meeting shall organize by taking the constitutional oath of office, which oath shall be filed in the office of the Secretary of State, electing from among the members a president and secretary, and formulating rules for its government. Five members shall constitute a quorum for the transaction of all business. All votes cast for or against the adoption of any text books shall be recorded in the minutes of the Commission, together with the names of those voting for or against such adoption: Provided, that all meetings shall be opened to the public and that said Commission must make a full report to the Governor not later than the first Monday in November next preceding any regular or special meeting of the Legislature. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 132.)

793. *Meeting of commission.*—The State Text Book Commission shall meet in the State Capitol in the city of Helena, on the third Monday in June, 1907, and every five years thereafter and the President of said Commission is authorized to call a meeting thereof on the first Monday of October next preceding the sessions of the Legislature, if in his opinion, there shall be business of importance to transact. He must also on ten days' notice to the members to be given by the Secretary, call a meeting of the Commission at any time to receive proposals and to enter into con-

tracts with publishers for supplying text-books whenever new contracts shall become necessary by reason of the contracts for certain books heretofore entered into becoming terminated by rescission or otherwise ceasing to be in full force and effect, and to adopt additional supplementary books whenever it is deemed for the best interests of the schools of the State. At the meeting held on the third Monday in June, 1907, and every five years thereafter the Commission shall adopt a uniform series of text books for use in all the public schools of the state not including high schools. Said Commission may adjourn from day to day until it shall have made such adoption, provided the session shall not continue beyond six actual days, and nothing herein contained shall be so construed as to have any reference to Section 1030 (2000) of the Political Code relating to school libraries, but said section shall remain in full force and effect. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 132.*)

794. *Contracts for supplying text books.*—Beginning with April 1st, 1907, and every five years thereafter in which a full series of text-books is to be adopted in conformity with this Act, the Superintendent of Public Instruction shall advertise for thirty days in two daily newspapers in this state giving notice that the Text-Book Commission will meet, as herein provided, and that they will receive sealed proposals up to twelve o'clock noon, of said third Monday in June, for supplying the State of Montana with a series of basal text-books for use in all the public schools of said state, for a period of five years from and after first day of September A. D. 1907, and every fifth year thereafter, in the following branches to-wit:—Reading, Spelling, Writing, Arithmetic, Geography (elementary and advanced) Language and Grammar, Physiology and Hygiene, Civil Government (state and national) History of the United States (elementary and advanced.)

Said Commission are hereby empowered to adopt such other text-books supplementary to the basal text-books above referred to as they may deem advisable. Said sealed proposals shall be addressed to the Chairman of the State Text-Book Commission, Helena, Montana, and shall be indorsed "Sealed proposals for supplying text-books for use in the State of Montana." Said proposals shall state the net wholesale prices at which the publishers whose books may be adopted by the Text-book Commission, will agree to deliver the same in the City of Chicago, Illinois, F. O. B., to merchants in Montana, or to school districts purchasing the same. They shall also state the exchange prices for new books adopted in exchange for the old books in the hands of the pupils, and for new books in hands of districts or dealers, which may be displaced, grade for grade, and shall further state the retail price at which they will keep all the text-books so adopted on sale

uniformly in at least one place in each county through out the State. Whenever any contract shall be terminated by recession, or shall otherwise cease to be in force and effect, the text-book Commission shall, within ten days after the termination of such contract advertise in the same manner and for the same length of time as elsewhere mentioned in this section for proposals to furnish text-books on the same subjects as those embraced within such contract for the same length of time and bids shall be received in the same manner as hereinbefore provided. The publishers, contracting and agreeing to supply text-books for use in the State of Montana under the provisions of this Act, shall cause to be prepared a special map and special supplement descriptive of Montana for the geography adopted by said Commission. They shall also cause to be prepared a special supplement for Montana for the Civil Government adopted, which supplement shall contain not less than thirty pages. They shall further agree to maintain the mechanical excellence of the books adopted by said Commission, fully equal to the samples submitted, in binding, printing, quality of paper, and other essential features, and the books shall be of the latest revised edition. The map and special descriptive geography of Montana shall be revised every five years by the publishers. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 132.*)

795. *Selection of text books.*—It shall be the duty of said Text-Book Commission to meet at the time and place mentioned in said notice and open sealed proposals in the presence of a quorum of said Commission and in public to select and adopt such text-books, both basal and supplementary, for use in all the public schools of this state. The series of text-books, so selected and adopted by said Text-Book Commission shall be certified to by the Chairman and Secretary and said certificate with a copy of all the books named therein shall be placed on file in the office of the Superintendent of Public Instruction. Such certificate must contain a complete list of all books adopted by said Commission, giving the wholesale, retail and exchange prices for which each kind and grade will be furnished, as provided in the preceding section, and the name of the publishers contracting to furnish the same. The said books named in said certificate shall for a period of five years from and after the first day of September of the year in which they are adopted be used in all the public schools of the State to the exclusion of all others. And in the case of any text book whose publication shall not have been completed before the meeting of the State Text Book Commission, it shall be permissible for the publisher in making a bid to file with the Commission a copy of the manuscript of such text book, together with such exhibits as will satisfactorily illustrate the quality of paper, typography and binding to be used in the publication of such

text book, and it shall be permissible for the Commission to adopt such text book in their discretion, the same as in the case of any text book previously published. *Provided*, that nothing in any part of this Act shall be so construed as to prevent the purchase or use by any person or district of any supplementary or reference books for use in any of the schools of the state. [*Act approved March 7th, 1907, § 5.*] (10th Sess. Chap 132.)

796. *Contracts and agreements.*—The said Text-Book Commission shall have power to make such contracts and agreements for the use and supply of text-books in the name of the State as they shall deem necessary for the best interests of the public schools of the State, and shall require of all publishers contracting and agreeing to furnish books adopted by the said Text-Book Commission bonds equal in amount to one-half the value of the books to be furnished, conditioned that upon the failure on the part of such publishers to comply with the terms of such contracts or any part thereof, in any County of the State, upon notice being given as provided for herein, said bonds, may, by the Governor of the State of Montana, be declared forfeited, and actions brought in the name of the State upon such bonds to recover the full amount named therein which amount shall be deemed to be fixed and liquidated damages for the breach of such contracts; *Provided*, that the Text-Book Commission may, at their discretion, reject any and all proposals if it be deemed by them to be to the interests of the State so to do, and they shall advertise for new proposals, stating the time when such new proposals will be received by them, not later, however, than thirty days from the rejection of the first proposals: *Provided*, further, that the contract price of such books shall not exceed the lowest wholesale price charged for the same books in Chicago, F. O. B., to any state in the United States. [*Act approved March 7, 1907, § 6.*] (10th Sess. Chap. 132.)

797. *Bond for performance of contracts.*—The contract with the publishers shall take effect only when the publishers of the books adopted by the said Text-Book Commission shall have filed with the Secretary of State their bond, with at least two sufficient sureties, to be approved by the Governor in such sum as shall be determined, by said Text-Book Commission, conditioned, that they shall comply with the terms of their proposal to the State and such further conditions as may be agreed upon between said Text-Book Commission and the publishers contracting with the State. [*Act approved March 7, 1907, § 7.*] (10th Sess. Chap. 132.)

798. *Forfeiture of contract for non-performance.*—In case the publishers of the books adopted by the said Text-Book Commission shall not on or before the 15th day of July, A. D. of the year in which the series of text-books is to be adopted have filed with the Secretary of State their bond as hereinbefore provided,

or in case they shall not on or before the 15th day of July A. D. of said year have performed all the obligations of their contracts with respect to the exchange and introduction of books and the preparation and supply of the special maps, and the special descriptive matter for the geography so adopted, or the special supplement for the Civil Government, or in case they shall at any time thereafter violate or fail to perform any of the conditions specified in their bond as hereinbefore provided and shall fail within reasonable time after due notice has been given by the Governor to make good their guarantee in any respect in which they may have failed, then this adoption shall become null and void. The said text-books adopted by the said Text-Book Commission under this Act and upon compliance of the publishers of the conditions aforesaid shall continue in use for the period of five years from the first day of September of the year above mentioned to the exclusion of all others except as herein otherwise provided. [*Act approved March 7, 1907, § 8.*] (*10th Sess. Chap. 132.*)

799. *Price list of books to be printed and distributed.*—Whenever the publishers of the books adopted under the provisions of this bill shall have filed their bonds as hereinbefore provided, it shall be the duty of the State Superintendent of Public Instruction to cause all prices of the text-books as guaranteed by the publishers to be properly printed and distributed through the County Superintendents to the trustees of all school districts in the State who shall cause the same to be kept constantly posted in a conspicuous place in each school room in their district and it shall be the duty of the several county superintendents to keep themselves informed as to whether such prices are actually maintained by the said publishers, and at once notify the Superintendent of Public Instruction of any violation of the contracts entered into by virtue of the authority contained in this Act, which may come to their knowledge, and it shall be the duty of the Superintendent of Public Instruction to promptly communicate such information to the Governor. [*Act approved March 7, 1907, § 9.*] (*10th Sess. Chap. 132.*)

800. *Penalty for using other than selected books.*—Any school officer, teacher or trustee, who shall use or provide for the use in the public schools of the State text-books other than those adopted by the said Text-Book Commission, except as herein otherwise provided, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [*Act approved March 7, 1907, § 10.*] (*10th Sess. Chap. 132.*)

801. *Annual report as to the use of books.*—All county superintendents and all school officers are charged with execution of this law and the county school superintendent shall require the

trustees of the several school districts or the clerks thereof, to report annually whether or not the authorized text-books are used in their schools. [*Act approved March 7, 1907, § 11.*] (10th Sess. Chap. 132.)

802. *Election upon proposition to supply free text books.*—Upon the petition of five legal voters of any school district other than in incorporated cities, and upon petition of one hundred legal voters in incorporated cities, towns, and villages, filed with the Board of Trustees or Board of Education, it shall be the duty of the Board of Trustees or Board of Education as the case may be, to notify the voters of such school district that an election “for” or “against” free text-books will be held at the next ensuing election for members of the Board of Trustees or Board of Education, and the ballots to such effect shall be received and canvassed at such election and if a majority of all the votes cast in the district shall be found to be in favor of free text-books it shall be the duty of the Board of Trustees or Board of Education as the case may be, to purchase at the expense of such district all the text-books required for use of all the pupils attending school in such school district; and said text-books shall be loaned to the pupils of said public schools, free of charge, subject to such rules and regulations as to care and custody, as the Board of Trustees or Board of Education shall prescribe; Provided, that the pupils may purchase at cost any of the text-books so furnished, when desired by them. Provided, that the question of free text-books shall be submitted to a vote in every school district in the State at the regular election held on the first Saturday of April, 1907, or any year thereafter without petition as hereinbefore provided for; and the notice of such election must, in addition to the other matters required by law, contain a statement of the fact that the question of free text-books will be voted upon at such election. [*Act approved March 7, 1907, § 12.*] (10th Sess. Chap. 132.)

803. *Special levy to provide free text books.*—That for the purpose of raising money to pay for school books, which may be furnished to pupils free by any district adopting free text-books a special levy upon the taxable property of such district, shall be made by the County Commissioners of the county on estimates furnished by the school trustees of the district, if the money received from the general fund from the district be insufficient and said levy shall be made within thirty days from and after the adoption of said free text-books in any district that has by majority vote adopted the same, and when made the tax levied shall be collected in the same manner as other taxes are collected; Provided, further, that any district that shall furnish free text-books shall have the right, through its Board of Trustees, to adopt supplementary books within the meaning of this Act and provided

that this adoption has been authorized by a two-thirds vote of the trustees of said district. [*Act approved March 7, 1907, § 13.*] (*10th Sess. Chap. 132.*)

804. *Compensation of text book commissioners.*—The members of said Text-Book Commission provided for by this Act, shall receive the sum of \$6.00 per diem for each day necessarily engaged in transacting business and while in session, and actual traveling expenses; and there is hereby appropriated the sum of One Thousand Dollars per year, or so much thereof as may be necessary to carry out the provisions of this Act; Provided, that said Commission shall not be in session more than ten days in any one year. [*Act approved March 7, 1907, § 14.*] (*10th Sess. Chap. 132.*)

CHAPTER VII.

PUBLIC SCHOOLS.

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ARTICLE I.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

- Section 805. Election, qualification, oath and bond.*
 “ 806. *Duties.*
 “ 807. *General powers.*

<i>Section</i>	<i>808.</i>	<i>Duty.</i>	<i>Blanks.</i>
"	<i>809.</i>	<i>Same.</i>	<i>Examinations.</i>
"	<i>810.</i>	<i>Same.</i>	<i>Course of study.</i>
"	<i>811.</i>	<i>Same.</i>	<i>Institute rules.</i>
"	<i>812.</i>	<i>Same.</i>	<i>County superintendents.</i>
"	<i>813.</i>	<i>Same.</i>	<i>Records.</i>
"	<i>814.</i>	<i>Same.</i>	<i>School laws.</i>
"	<i>815.</i>	<i>Same.</i>	<i>Seal.</i>
"	<i>816.</i>	<i>Same.</i>	<i>Institutes.</i>
"	<i>817.</i>	<i>Same.</i>	<i>Report.</i>
"	<i>818.</i>	<i>Same.</i>	
"	<i>819.</i>	<i>Apportionment of school fund.</i>	
"	<i>820.</i>	<i>Clerk.</i>	<i>Salary.</i>
"	<i>821.</i>	<i>Salary of superintendent of public instruction.</i>	
"	<i>822.</i>	<i>Expenses.</i>	

805. (§ 1700.) *Election, qualification, oath and bond.*—There shall be chosen by the qualified electors of the state, at the time and place of voting for members of the legislature, a superintendent of public instruction, who shall have attained the age of thirty years at the time of his election, and shall have resided within the state two years next preceding his election, and is the holder of a state certificate of the highest grade issued in some state, or is the graduate of some reputable university, college or normal school. He shall hold his office at the seat of government, for the term of four years from the first Monday in January following his election, and until his successor is elected and qualified. Before entering upon his duties he shall take the oath of civil officers and give a bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the governor and attorney general. [*Act approved March 11, 1895.*]

806. (§ 1701.) *Duties.*—The superintendent shall preserve in his office all books, maps, charts, works on education, school reports and school laws of other states and cities, plans for school buildings, and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term shall deliver them, together with the reports, statements, records and archives of his office to his successor. [*Act approved March 11, 1895.*]

807. (§ 1702.) *General powers.*—He shall have the general supervision of the public schools of the state. [*Act approved March 11, 1895.*]

808. (§ 1703.) *Duty. Blanks.*—He shall prepare, cause to be printed, and furnish to the proper officers or persons all school registers, reports, statements, notices and blanks for returns needed or required to be used in the schools or by the school officers, in the state. He shall prepare and furnish to school officers,

through the county superintendents, lists of publications approved by him as suitable for school libraries; such lists shall contain also the lowest price at which such publications can be purchased, and the terms. He shall also prescribe rules and instructions for the proper care and use of school libraries and such other information relative thereto as he shall think needful. [*Act approved March 11, 1895.*]

809. (§ 1704.) *Same. Examinations.*—He shall prepare all questions to be used in the examination of applicants for teachers' county certificates, and prescribe the rules and regulations for conducting all such examinations. [*Act approved March 11, 1895.*]

810. (§ 1705.) *Same. Course of study.*—He shall prepare and prescribe a course of study for all the public schools of the state. [*Act approved March 11, 1895.*]

811. (§ 1706.) *Same. Institute rules.*—He shall prescribe rules and regulations for the holding of teachers' institutes. [*Act approved March 11, 1895.*]

812. (§ 1707.) *Same. County superintendents.*—He shall counsel with and advise county superintendents upon all matters involving the welfare of the schools; he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendents, and may for such decision, require affidavits, verified statements or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced rules of practice and regulations pertaining to the hearing and determining of appeals, and necessary for carrying into effect the school laws of the state. [*Act approved March 11, 1895.*]

813. (§ 1708.) *Same. Records.*—He shall keep a record of his official acts, and shall file in his office all appeals and papers pertaining thereto. [*Act approved March 11, 1895.*]

814. (§ 1709.) *Same. School laws.*—He shall at least once in four years cause to be printed the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them as they are needed to the school officers in the state. [*Act approved March 11, 1895.*]

815. (§ 1710.) *Same. Seal.*—He shall provide and keep a seal, which shall be the official seal of the state superintendent of public instruction, and by which all of his official acts may be authenticated. [*Act approved March 11, 1895.*]

816. *Same. Institutes.*—He shall attend and assist at teachers' institutes and aid, and encourage generally, teachers in qualifying themselves for the successful discharge of their duties. He shall also as far as he shall find practicable address public assemblies on subjects pertaining to public schools, and shall labor faithfully in all practicable ways for the welfare of the public

schools of the State and shall perform such other duties as shall be required of him by the law. [*Act approved March 8th, 1897, § 1.*] (5th Sess. 129.)

817. (§ 1712.) *Same. Report.*—He shall, on or before the first day of December preceding the biennial session of the legislative assembly, make and transmit to the governor a report showing:

1. The number of school districts, schools, teachers employed and pupils taught therein, and the attendance of pupils and studies pursued by them.

2. The financial condition of the schools, their receipts and expenditures, value of school houses and property, cost of tuition and wages of teachers.

3. The condition, educational and financial, of the normal and higher institutions connected with the school system of the state, and, as far as it can be ascertained, of the private schools, academies and colleges of the state.

4. Such general matters, information and recommendations relating to the educational interests of the state as he may deem important. [*Act approved March 11, 1895.*]

818. (§ 1713.) *Same.*—Fifteen hundred copies of the report of the superintendent of public instruction shall be printed biennially, in the month of December preceding the session of the legislative assembly. Two copies shall be furnished to each of the members of the legislative assembly, one copy to each county superintendent of the state, one copy to the clerk of each school board, two to each state officer, one to each state and territorial superintendent; fifty copies shall be filed in the office of the superintendent of public instruction and ten in the state historical library. The balance shall be distributed among the various college, university and other libraries of the United States. [*Act approved March 11, 1895.*]

819. (§ 1714.) *Apportionment of school fund.*—He shall, between the first and tenth days of February of each year, apportion the state school fund among the several counties of the state, in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. It shall be the duty of the state board of land commissioners to notify the state auditor on or before the tenth day of January of each year, the amount of the state school fund subject to apportionment; and the said auditor immediately upon receipt of such notification shall issue his warrant on the state treasurer for the said amount. Thereupon the state treasurer shall certify said apportionment to the several county treasurers not later than the first Monday in March; *Provided*, That the several county treasurers have fully complied with § 183 of "an act concerning revenue," approved March 6, 1891, in which case the county treasurers, upon re-

ceiving notice from the state treasurer of the amounts due their counties from the state school fund, may deduct said amount from the amount found due the state by their counties and remit the balance to the state treasurer. The superintendent of public instruction shall certify to the county superintendent of schools of each county, the amount apportioned to that county. [*Act approved March 11, 1895.*]

State v. Cave, 20 Mont. 473; 52 Pac. 202. The superintendent of public instruction is required to apportion the state school funds among the counties in proportion to the number of children of school age in each county.

Jay v. School District, 24 Mont. 228;

61 Pac. 253. The moneys derived from interest on the state school fund, and other sources, controlled by the state, are apportioned to the counties, and the amount falling to each county is made available for school purposes not later than February tenth of each year.

820. (§ 1715.) *Clerk. Salary.*—The superintendent of public instruction shall have power to appoint one clerk, who shall receive an annual salary of fifteen hundred dollars, and shall perform such duties pertaining to the office as the superintendent may direct. Said clerk shall also perform the duties of clerk of the state board of education. [*Act approved March 11, 1895.*]

821. *Salary of Superintendent of public instruction.*—The annual salary of the Superintendent of Public Instruction, for all services now required of him or which may hereafter be devolved upon him by law, is Three Thousand Dollars. He shall also be paid his traveling expenses, actually and necessarily incurred in the discharge of his duties, not to exceed Five Hundred Dollars in any one year. [*Act approved March 6, 1907, §. 2.*] (*10th Sess. Chap. 116.*)

822. (§ 1717.) *Expenses.*—All necessary expenditures of money incurred by the superintendent of public instruction for postage, stationery, printing and expressage, not exceeding two hundred and fifty dollars in any one year, shall be paid by the state. [*Act approved March 11, 1895.*]

ARTICLE II.

COUNTY SUPERINTENDENT OF SCHOOLS.

<i>Section</i>	823.	<i>Election. Term. Oath. Bond.</i>
"	824.	<i>General powers.</i>
"	825.	<i>Duty. Visiting schools.</i>
"	826.	<i>Same. Blanks.</i>
"	827.	<i>Same. Record.</i>
"	828.	<i>Same. Controversies.</i>
"	829.	<i>May administer oaths.</i>
"	830.	<i>Apportionment of school moneys; warrants.</i>
"	831.	<i>Preside at institutes.</i>
"	832.	<i>May issue temporary certificates.</i>
"	833.	<i>Annual report.</i>
"	834.	<i>Boundaries of school districts.</i>

Section 835. Expenses of office.

" 836. *Must not teach.*

" 837. *Qualifications.*

" 838. *Census to be transmitted to bureau of agriculture, labor and industry.*

823. (§ 1730.) *Election. Term. Oath. Bond.*—A county superintendent of schools shall be elected in each organized county in this state at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take office on the first Monday in January next succeeding his election, and hold for two years or until his successor is elected and qualified. The person so elected shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county. The county commissioners of any county, shall, by appointment, fill any vacancy that may occur in the office of county superintendent, until the next general election; *Provided*, That all persons otherwise qualified shall be eligible to the office of county superintendent of common schools without regard to sex. [*Act approved March 11, 1895.*]

824. (§ 1731.) *General powers.*—The county superintendent shall have the general supervision of the public schools in his county. [*Act approved March 11, 1895.*]

825. (§ 1732.) *Duty. Visiting schools.*—He shall visit every public school under his supervision at least once each official year, and oftener if he shall deem it necessary to increase its usefulness. He shall at such visit carefully observe the condition of the school, the mental and moral instruction given, the methods employed by the teacher in teaching, training and drill; the teacher's ability and progress of the pupils. He shall advise and direct the teacher in regard to the instruction, classification, government and discipline of the school, and the course of study. He shall keep a record of such visits, and by memoranda indicate his judgment of the teacher's ability to teach and govern, and the condition and progress of the school, which shall be open to inspection to any school trustee. [*Act approved March 11, 1895.*]

826. (§ 1733.) *Same. Blanks.*—He shall carry into effect all instructions of the state superintendent given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished by the state superintendent and needed by such officers and teachers. [*Act approved March 11, 1895.*]

827. (§ 1734.) *Same. Record.*—He shall keep a record of all his official acts. He shall preserve all books, maps, charts and apparatus sent him as a school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards and shall turn them over to his successor in office. [*Act approved March 11, 1895.*]

828. (§ 1735.) *Same. Controversies.*—He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decisions of school officers or boards. An appeal may be taken from his decision, in which case a full written statement of the facts, together with the testimony and his decision in the case, shall be certified to the state superintendent for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the state courts. [*Act approved March 11, 1895.*]

829. (§ 1736.) *May administer oaths.*—The county superintendent shall have power to administer oaths of office to all subordinate school officers and to witnesses, and to examine them under oath in case of appeal, of revoking the certificate of a teacher and in all controversies and questions arising in the administration of the school laws brought or coming before him for opinion, order or decision; but he shall not receive pay for administering such oaths. [*Act approved March 11, 1895.*]

830. *Apportionment of school moneys; warrants.*—The County Superintendent shall apportion all school moneys to the school districts in accordance with the provisions of this title quarterly, and he may make apportionments at such other time as may be required or deemed necessary for the convenience of school officers. He shall certify to the several district clerks and County Treasurers the amount so apportioned to the several districts, and the trustees shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrant shall show for what purpose the money is required, and no such warrant shall be drawn unless there is money in the Treasury to the credit of such district. Provided, that school trustees shall have the authority to issue warrants in anticipation of school moneys which have been levied but not collected, for the payment of current expenses of schools, but such warrants shall not be drawn in any amount in excess of the sum already levied. [*Act approved March 14th, 1901, § 1.*] (7th Sess. 121.)

State v. Cave, 20 Mont. 473; 52 Pac. 202.

Jay v. School District, 24 Mont. 228; 61 Pac. 253.

831. (§ 1738.) *Preside at institutes.*—He shall preside over all teachers' institutes held in his county, and shall elect suitable persons to instruct therein from the list of teachers commissioned by the state board of education. [*Act approved March 11, 1895.*]

832. (§ 1739.) *May issue temporary certificates.*—He shall have power to issue, if he deem it proper to do so, temporary certificates, valid until the next regular examination, to persons holding certificates of like grade granted in other counties, or upon any certificates or diplomas possessed by the applicant showing his fitness for the profession of teaching; *Provided*, That no per-

son shall be entitled to receive such temporary certificate more than once in the same county. [*Act approved March 11, 1895.*]

833. (§ 1740.) *Annual report.*—He shall, on or before the first day of November each year, make and transmit an annual report to the superintendent of public instruction, containing such statistics, items and statements relative to the schools of the county, as may be required and prescribed by the superintendent of public instruction. Such reports shall be made upon and conform to the blanks furnished by the superintendent of public instruction for that purpose. He shall not be paid his salary for the last month in his official year until he presents to the county commissioners the receipt of the superintendent of public instruction for such annual report. [*Act approved March 11, 1895.*]

834. (§ 1741.) *Boundaries of school districts.*—The county superintendent shall inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the board of county commissioners, and to keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting, or are incorrectly described, he shall change, harmonize and describe them, and make a report of such action to the commissioners; and on being ratified by the commissioners, the boundaries and descriptions so made shall be the legal boundaries and descriptions of the districts of that county. The county superintendent shall furnish the several district clerks with descriptions of the boundaries of their respective districts. [*Act approved March 11, 1895.*]

835. *Expenses of office.*—The County Superintendent may provide for himself a suitable office for the transaction of official business, when not provided therewith by the County Commissioners, and said Commissioners shall audit and pay his reasonable accounts for the use and the furniture of said office. They shall also furnish him with all necessary stationery and postage; provided, that not more than one hundred and twenty-five (\$125.00) Dollars a year shall be paid by any county for office rent, stationery, postage and furniture; *provided*, further, that when an office room is furnished by the county he shall not exceed Fifty (\$50.00) Dollars a year for stationery and postage. County Superintendents in counties of the seventh and eighth class shall be allowed their actual, necessary expenses when engaged in visiting schools in their counties. Such expenses shall be paid in the same manner as other county charges. [*Act approved March 14th, 1901, § 2.*] (*7th Sess. 121-2.*)

836. (§ 1743.) *Must not teach.*—No county superintendent shall engage in teaching during his term of office. [*Act approved March 11, 1895.*]

See act approved March 8, 1897, § 2 (5th Sess. 129.)

837. (§ 1744.) *Qualifications.*—No person shall be deemed legally qualified for the office of county superintendent unless he or she holds a certificate of the highest county grade, is a citizen of the United States, has resided one year next preceding the election in this state, and one year in the county in which he is a candidate, and has had twelve months' successful experience in teaching in the public schools of this state; *Provided*, That in case a certificate held by any of the present incumbents of the office of county superintendent shall expire during the term of such superintendent, such person may apply to the superintendent of the nearest county for a certificate, as provided by law; and in case a certificate shall be refused, the party feeling grieved thereby may appeal to the superintendent of public instruction, who may, upon examination of said person, determine whether a certificate shall be granted. [*Act approved March 11, 1895.*]

State v. Acton, 81 Mont. 43; 77 Pac. 301. This section applies to men and women alike. The office of county superintendent of schools is created by the constitution, and the legislature does not

have the power to prescribe an additional qualification to those enumerated in the constitution, and require that the candidate to such office shall hold a certificate of the highest county grade.

838. *Census to be transmitted to Bureau of Agriculture, Labor and Industry.*—It shall be the duty of the County Superintendent of Schools to prepare and transmit within thirty days after he receives the school census from the district clerk, a copy of the census showing the name, sex, age and date of birth of each child under seventeen years of age residing in the county together with the names of the parents or guardians of such children to the Commissioner of the Bureau of Agriculture, Labor and Industry. No County Superintendent shall be paid his salary for the last month in his official year until he presents to the County Commissioners the receipt of the Commissioner of the Bureau of Agriculture, Labor and Industry for such annual census report. [*Act approved February 18, 1907.*] (10th Sess. Chap. 17.)

ARTICLE III.

SCHOOL DISTRICTS.

Section 839. *School district defined.*

“ 840. *Organization of new district.*

“ 841. *District boundaries.*

“ 842. *Apportionment of moneys to new districts.*

“ 843. *Division of district funds and property.*

“ 844. *District in two counties.*

“ 845. *Employment of teacher not qualified.*

“ 846. *Must maintain school for three months. Division of district.*

Section 847. Unauthorized text books; penalty.

“ 848. *Powers as body corporate.*

“ 849. *When district may be created.*

839. (§ 1750.) *School district defined.*—The term “school district,” as used in this title, is declared to mean the territory under the jurisdiction of a single board, designated as “board of trustees,” and shall be organized in form and manner as hereinafter provided, and shall be known as district No.—— of—— county; *Provided*, That all school districts now existing, as shown by the records of the county superintendents, are hereby recognized as legally organized districts. [*Act approved March 11, 1895.*]

840. (§ 1751.) *Organization of new district.*—For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by the parents or guardians of at least ten census children, between the ages of six and twenty-one years, residing within the boundaries of the proposed new district, and residing at a greater distance than two miles from any school house, which petition shall describe the boundaries of the proposed new district, and give the names of all children of school age residing within the boundaries of the proposed new district, at the date of presenting said petition. The county superintendent shall give notice to parties interested by posting notices at least ten days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the school house door of each district affected by the proposed change, or if there be no school house, then in one of the most public places of said old district, and shall on the day fixed in the notice proceed to hear said petition, and if he deem it advisable to grant the petition, he shall make an order establishing said district and describing the boundaries thereof, from which order an appeal may be taken by three resident taxpayers of said new district to the board of county commissioners within thirty days, and their decision shall be final; *Provided*, That should the county superintendent refuse to make an order establishing said new district an appeal may be taken by three resident taxpayers of said new district, in the manner hereinbefore described. [*Act approved March 11, 1895.*]

841. (§ 1752.) *District boundaries.*—The boundaries of any district cannot be changed, except in forming new districts, unless a majority of heads of families residing on the territory which it is proposed to transfer or include, present a petition in writing to the county superintendent, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change and the number of children of

school age residing in the territory to be transferred or included. The county superintendent shall file said petition in his office, and shall give notice to parties interested by posting notices at least ten days prior to the time appointed for considering said petition, one of which shall be in a public place in the territory which it is proposed shall be annexed or transferred, and one on the door of the school house in each district affected by the change, or if there be no school house in such district, then in some public place in such district or districts, and at the time stated in said notices he shall proceed to hear said petition and if he deem it advisable, he shall grant the same and make an order fixing the boundaries, and unless an appeal be taken to the board of county commissioners within thirty days, and upon a hearing thereof the decision of said board shall be final. All of the papers, documents and records in the case shall be certified to the county commissioners for their determination of the matter on appeal; *Provided*, That two or more districts lying contiguous may, upon a petition of a majority of the heads of families residing in each of said districts presented to the county superintendent in writing, be united to constitute but one district; *Provided, further*, That joint districts (districts lying partly in one county and partly in another) may be formed in the same manner as other new districts are formed, except that the petition herein provided for must be made to the county superintendent of each county affected; but in the case of joint districts, all of the provisions herein enumerated for the formation of a new district must be by concurrent action of the superintendent of each county affected. [Act approved March 11, 1895.]

842. (§ 1753.) *Apportionment of moneys to new districts.*—No new district, formed by the subdivision of an old one, shall be entitled to any share of public money belonging to the old district, until a school has actually been taught one month in the new district, and unless within eight months from the order of the county superintendent granting such new district, a school is opened, the action making a new district shall be void and all elections or appointments of trustees or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine. [Act approved March 11, 1895.]

843. (§ 1754.) *Division of district funds and property.*—When a new district is formed from one or more old ones, the school funds remaining to the credit of the district, after providing for all outstanding debts, excepting debts incurred for building and furnishing school houses, shall be divided as follows: The basis for the division of the school fund shall be the school population, as shown by the last school census before the division of the district or districts occurred, and shall apply to such funds

as remain to the credit of said old district or districts at the time of the organization of said new district, and said district shall receive funds in proportion to its per cent. of the said census. In case of division, each district shall own and hold all permanent property such as sites, school houses and furniture situated within its boundaries. All division of funds under this provision shall be made by the county superintendent, and when there are unpaid special taxes on the county tax book belonging to a district at the date of its division, the county treasurer, upon being notified of such division by the county superintendent, shall retain all money received in payment of such special tax until the same shall be apportioned by the county superintendent, whose duty it shall be to apportion said money quarterly between the fractions of the divided district, according to the location of the property on which said tax was levied. At the first apportionment after the organization of a new district, the county superintendent shall apportion to such district its per capita proportion of the general fund, but no money, either from the general or special fund, shall be paid out of the county treasury on account of such district, until a school shall have been taught therein one month. [Act approved March 11, 1895.]

844. (§ 1755.) *District in two counties.*—Whenever a district lies partly in one county and partly in another, the county superintendent must apportion to such district such proportion of the school money to which such district is entitled as the number of school census children residing in that portion of the district situate in his county bears to the whole number of school census children in the whole district. The trustees and teachers of joint districts must make to the superintendent of each county in which the district is located the reports which other trustees and teachers are required to make and also the number of pupils attending the school from each county; and all other acts which from their nature should be separately kept and done, as if each portion of said joint district belonging to each county were an entire district in the respective counties. The teachers of such joint districts shall have certificates from the superintendent of the county in which the school house is located. [Act approved March 11, 1895.]

845. *Employment of teacher not qualified.*—The Board of Trustees of any school district who shall employ any teacher who is not legally qualified to teach in public schools of their district shall be deemed guilty of a misdemeanor; *provided*, that this Section shall not apply to those Trustees who do not consent to such employment. [Act approved March 14th, 1901, § 3.] (7th Sess. 122.)

Jay v. School District, 24 Mont. 223; 61 Pac. 251. A contract for the employment of a teacher holding a certificate for a school year of nine months, is of no effect. Teachers must make annual reports to the county superintendent, or if the employment be only three months, at the end of such time.

846. *Must maintain school for three months. Division of District.*—No School District shall be entitled to receive any apportionment of any school monies, which shall not have maintained a free school for at least three months during the next preceding school year; *provided*, That any new district formed by the division of an old one shall be entitled to its apportionment, where the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least three months, and, *provided further*, that in isolated sections of a district consisting of not less than four children, and distant not less than five miles from the established school house in such district, where a school is maintained for three or four months by a regular qualified teacher for the benefit of the children of the families of such section, such district may draw the apportionment of school money for the children so attending said school. [Act approved March 5th, 1903. § 1.] (8th Sess. Chap. 81.)

847. *Unauthorized text books; penalty.*—The trustees of any school districts using text-books other than those prescribed by law, (except for supplementary purposes) shall be deemed guilty of a misdemeanor. *Provided*, That the foregoing shall only apply to those trustees consenting to the use of such other books. [Act approved March 8th, 1897, § 4.] (5th Sess. 130.)

848. (§ 1759.) *Powers as body corporate.*—Every school district constituted and formed as provided in this title shall be and is hereby declared to be a body corporate, and under its own proper name or number as such corporate body may sue and be sued, contract and be contracted with, and may acquire, purchase and hold and use personal or real property for school purposes for the purposes mentioned in this title, and sell and dispose of the same. [Act approved March 11, 1895.]

Jay v. School District, 24 Mont. 232; limited. They can exercise none except
61 Pac. 254. School districts are public such as are conferred by the law creating
corporations but their powers are very them.

849. (§ 1760.) *When district may be created.*—No school district shall be created between the first day of March and the first day of September following of each year. [Act approved March 11, 1895.]

ARTICLE IV.

ELECTION OF SCHOOL TRUSTEES.

- Section 850. *Election of trustees, classification of districts.*
 “ 851. *Elections in districts of first class.*
 “ 852. *Conduct of election.*
 “ 853. *County commissioners to call election.*
 “ 854. *Appointment of judges and notices of election.*
 “ 855. *Hours of election.*

- Section 856. *Publication of notice of election.*
 “ 857. *Qualification of electors.*
 “ 858. *Ballots and method of voting.*
 “ 859. *Challenges. Oath of voters.*
 “ 860. *Tally list and certificates of votes cast.*
 “ 861. *Canvass of votes.*
 “ 862. *Term of office. Oath of trustee.*
 “ 863. *Qualification of trustee.*
 “ 864. *Registration of voters.*
 “ 865. *Duty of registry agent.*
 “ 866. *Expenses of election.*
 “ 867. *Bond and compensation of trustees.*

850. *Election of trustees; classification of districts.*—An annual election of school trustees shall be held in each school district in the state on the first Saturday in April in each year, at the district school house, if there be one, and, if there be none, at a place designated by the Board of Trustees or the County Commissioners as the case may be. All districts having a population of eight thousand or more, are, and hereafter shall be, districts of the first class. All districts having a population of one thousand, or more, and less than eight thousand, are, and hereafter shall be, districts of the second class, and all districts having a population of less than one thousand are, and hereafter shall be, districts of the third class. In districts of the first class, the number of trustees shall be seven; in districts of the second class, the number of trustees shall be five, and, in districts of the third class, the number of trustees shall be three. In school districts having a population of over twenty thousand people, any trustee at the time of the passage of this Act, save those who are serving by appointment to fill vacancies, shall continue to hold for the term of two years from the third Saturday in the month of April of the year in which they were elected, and those filling vacancies until the third Saturday in April, 1899, and at all subsequent elections one or more trustees, as the case may be, must be elected, who shall serve for a term of two years or until their successors are elected or appointed, and shall have qualified. A vacancy in the office of school trustee must be filled by appointment by the County Superintendent of Schools, subject to confirmation by a majority of the remaining members of said board, if those remaining constitute a majority of the total of the board. [Act March 4, 1907, § 1.] (10th Sess. Chap. 69.)

851. *Election in districts of first class.*—In districts of the first class the election shall be under the supervision of the Board of County Commissioners of the county in which the same are situated, and shall be held and conducted as hereinafter provided. [Act approved March 6th, 1897, § 2.] (5th Sess. 137.)

852. *Conduct of Election.*—In districts of the second and third classes, the election of school trustees shall be held and conducted under the supervision of the Board of School Trustees. The clerk of the school district must not less than fifteen days before the election required under this Act, post notices in three public places in said district, and in incorporated cities in each ward, which notices must specify the time and place of election, and the hour during which the polls will be opened. The trustees must appoint by an order entered in their records, three qualified electors of said districts, to act as judges at such election, and the clerk of the district shall notify them by mail of their appointment. Said judges shall appoint one of their number to act as clerk at such election. If the judges named are not present at the time for opening the polls, the electors present may appoint judges and the judges so appointed shall designate one of their number to act as clerk. In the districts of the second and third classes, having fifty or more children of school age, the names of all candidates for membership on the School Board must be received and filed by the clerk and posted at each polling place at least five days next preceding the election. Any five qualified electors of the districts may file with the clerk the nominations of as many persons as are to be elected to the School Board at the ensuing election. [Act approved February 28th, 1899, § 1.] (6th Sess. 56-7.)

853. *County Commissioners to call election.*—The Board of County Commissioners shall, at least thirty days before the annual election of school trustees, by an order entered upon the minutes of their meeting, designate and establish a suitable number of polling places, and create an equal number of election precincts to correspond, and define the boundaries thereof. [Act approved March 3rd, 1899, § 2.] (6th Sess. 58.)

Hauswirth v. Mueller, 25 Mont. 160; 64 Pac. 325.

854. *Appointment of judges and notice of election.*—The board of County Commissioners shall, at least ten days before the day of annual election for trustees in any district of the first class, appoint three qualified electors of the district for each polling place established, to act as judges of election, and the County Clerk shall notify such persons by mail of their appointment. Such judges shall designate one of their number to act as clerk at such election. If the judges appointed or any of them are not present at the time for the opening of the polls, the electors present may appoint judges, who must be qualified electors to act in the place of those who are absent. The County Clerk shall, at least fifteen days before the election required to be held under this Act, in districts of the first class, give notice of the election to be held in all said districts, by posting a notice thereof in three public places in the district, and in incorporated cities and towns

in each ward, which notices must specify the time and place of election, the number of trustees to be elected, and the hours during which the polls will be open. [*Act approved March 6th, 1897, § 5.*] (5th Sess. 138.)

855. *Hours of election.*—In districts of the first class the polls must be opened at eight o'clock A. M. and kept open until twelve o'clock M. and from one o'clock P. M. until eight o'clock P. M. In districts of the second and third classes the polls may be opened for such length of time as the board of trustees may order: *Provided* that, such polls must be kept open from two o'clock P. M. to six o'clock P. M. [*Act approved March 6th, 1897, § 6.*] (5th Sess. 138.)

856. *Publication of notice of election.*—Whenever in the judgment of the board of county commissioners the best interests of the district will be served by the publication of such notices of election in some newspaper in the county, they may, by an order entered on the minutes of their meeting, direct the County Clerk to publish the notice of election required to be given in districts of the first class in some newspaper in the county. [*Act approved March 6th, 1897, § 7.*] (5th Sess. 138.)

857. *Qualification of electors.*—Every citizen of the United States who has resided in the State of Montana for one year, and thirty days in the school district next preceding the election, may vote thereat. Women of the age of twenty-one years and upwards who are citizens of the United States, and who have resided in the State of Montana one year, and in the school district for thirty days next preceding the day of election, may vote thereat: *Provided* however that before any such person shall be entitled to vote in any district of the first class, he or she shall have registered as in this Act hereinafter required. [*Act approved March 6th, 1897, § 8.*] (5th Sess. 138-9.)

858. *Ballots and method of voting.*—The voting must be by ballot, without reference to the general election laws in regard to nominations, form of ballot, or manner of voting in districts of the second and third class. But in districts of the first class the ballot shall show the name or names of the candidates and the length of time for which they are to be elected. These ballots shall be as near as possible in the following form.

FOR SCHOOL TRUSTEES.

For three (3) year term.

VOTE FOR THREE.

☐

JOHN ABNER

☐

WILLIAM BROWN.

☐

ADAM SMITH

For one (1) year term.

VOTE FOR ONE.

☐

GEORGE DAVIS

In districts of the first class no person shall be voted for or elected as trustees, unless he or she has been nominated therefor by a bona fide public meeting held in the district at least ten days before the day of election, and at which at least twenty qualified electors were present, and a chairman and a secretary were elected, and a certificate of such nomination setting forth the place where the meeting was held, giving the names of the candidates in full, and if there are different terms to be filled, the term for which such candidate was nominated, duly certified by the chairman and secretary of such meeting, shall be filed with the county clerk at least eight days before the day of election. The nomination and election of any person shall be void, unless he or she was nominated at a meeting as above provided at which at least twenty qualified electors were present, and his or her nomination certified and filed as aforesaid, and the county commissioners shall not count any votes cast for any person, unless he or she has been so nominated and a certificate thereof filed as herein required. The county commissioners shall cause to be printed ballots of the form aforesaid, on which shall appear the names of all persons who were regularly nominated and whose certificate of nomination was properly filed as aforesaid. In districts of the first class the person desiring to vote shall, at the time he or she presents his or her ballot, announce his or her name, and the judges of election if they find such name on the official check list, or if not and he or she takes the oath herein prescribed, one of the judges shall take the ballot and deposit it in the ballot box, and the clerk shall immediately write the name of such person on the poll list and one of the judges shall write opposite the said name on the official check lists the word "voted." Any

person voting at such election who is not entitled to vote, and any person voting more than once thereat, shall be guilty of a misdemeanor and shall be punished accordingly; and any person taking a false oath, shall be guilty of perjury. No person shall be entitled to vote at any election for school trustees in any district of the first class, unless his or her name shall, on the day of election, appear on the official check list furnished by the county clerk to the judges of election: *Provided*, however, that if any person, otherwise qualified to vote, makes oath before one of the judges that he or she registered at any registry precinct in such district, naming it, before a registry agent giving his name, to vote at said election, and that his or her name does not appear correctly on said check list, or has been omitted therefrom, or that by reason of absence or sickness during the period of registration he or she was unable to register, the judges of election shall make an entry opposite his or her name on the poll list to the effect that he or she was sworn and voted, and shall permit him or her to vote. The county commissioners shall provide for each election of trustees double as many ballots as there are voters registered within such district. No other ballot than that provided by the county commissioners shall be received by the judges, and in districts of the first class, where a daily paper is issued, the commissioners shall cause to be published in at least one paper for three days preceding the election, such official ballot, and in such districts where there is no daily paper, but a weekly, the official ballot shall be printed at least once in a weekly paper. Trustees must provide in each polling place designated by them a sufficient number of booths, places, or compartments, which must be furnished with such supplies as shall enable the elector to conveniently prepare his or her ballot, and in which electors screened from observation must mark their ballots. Guard railing must be so constructed that only persons within such railing and officers of election can approach within ten feet of the ballot boxes or the booths herein provided. Before delivering any ballot to an elector the judges must print on the back and near the top of the ballot, with a rubber stamp, the designation "official ballot." Each qualified elector shall receive from the judge one ballot. The elector on receiving his or her ballot must forthwith without leaving the polling place, and within the guard-rail provided, and alone, retire to one of the booths or compartments, and prepare his or her ballot, by marking a cross before the name of each candidate for whom he or she desires to vote. After preparing his or her ballot the elector must fold it so that the face of the ballot will be concealed, and so that the endorsement stamped thereon may be seen. He or she must then vote forthwith, and before leaving the polling place. Any elector who, because of physical disability or inability to

read the English language is unable to mark his ballot, may request one of the judges to help him or her. Any elector who, by accident or mistake spoils his or her ballot, may on returning the spoiled ballot receive another. [*Act approved March 6th, 1897, § 9.*] (*5th Sess. 139-141.*)

State v. Long, 21 Mont. 32; 52 Pac. 647;

859. *Challenges. Oath of voters.*—Any person offering to vote may be challenged by any elector of the district, and the judges must thereupon administer to the person challenged an oath in substance as follows: "You do solemnly swear that you are a citizen of the United States; that you are twenty one years of age; and that you have resided in this State one year, and in this school district thirty days next preceding this election, and that you have not voted this day. So help you God." If he or she is a resident of a district of the second or third class, and he or she takes this oath, his or her vote must be received; otherwise rejected. If he or she is a resident of a district of the first class and takes this oath, and has complied with the provisions of this Act, with reference to elections therein or complies herewith, his or her vote must be received; otherwise it shall be rejected. Any person who shall swear falsely before any registry agent or judge of election, shall be guilty of perjury and shall be punished accordingly. [*Act approved March 6th, 1897, § 10.*] (*5th Sess. 141.*)

State v. Long, 21 Mont. 32; 52 Pac. 647.

860. *Tally list and certificates of votes cast.*—At every election held under this Act, in districts of the first class, a poll and tally list shall be kept by the judges and clerk at each polling place, and immediately after the close of the polls the judges shall count the ballots, and if there be more ballots than votes cast the judges must draw by lot from the ballots without seeing them, a sufficient number of ballots to make the ballots remaining correspond with the number of votes cast. The clerk shall write down in alphabetical order in a poll book provided for that purpose the name of every person voting, at the time he or she deposits his or her ballots. There shall also be provided a tally list for each polling place; after the ballots have been counted and made to agree with the poll list, the judges shall proceed to count them. The clerk shall enter in the tally list the name of every person voted for trustee, and the term, and tally opposite his or her name, the number of votes cast for him or her and at the end thereof set down in a column provided for that purpose the whole number of votes he or she has received. The judges and clerk shall sign a certificate to said tally list setting forth the whole number of votes cast for each person or trustee, designating the term, and they shall verify the same as being correct to the best of their knowledge before an officer authorized to administer

oaths. No informality in such certificate shall vitiate the election, if the number of votes received for each person can reasonably be ascertained from said tally list. In districts of the second and third class said books and tally lists shall be returned to the board of trustees of the district, who shall canvass the vote and cause the clerk of the district, to issue certificates of election to the person or persons elected, designating their term, a copy of which must be forwarded to the county superintendent of schools. In districts of the first class said poll books and the tally lists shall be delivered to the county clerk, and the board of county commissioners shall canvass the votes. School trustees are hereby authorized to administer oaths to the judges of election, and the oath of office to the trustees elected. [*Act approved March 6th, 1897, § 11.*] (5th Sess. 142.)

861. *Canvass of votes.*—The Board of County Commissioners shall canvass the votes of all districts of the first class in the same manner that they are required to canvass the votes at other elections and declare the results. The County Clerk shall thereupon make out and mail to the person or persons elected a certificate of election, stating the term, and shall mail a copy thereof to the county superintendent of schools. [*Act approved March 6th, 1897, § 12.*] (5th Sess. 142-3.)

862. *Term of office; oath of trustee.*—Trustees elected shall take office immediately after qualifying and shall hold office for the term of three years and until their successors are elected and qualified, or appointed by the county superintendent of schools and qualified. Every trustee elected shall file his or her oath of office with the county superintendent of schools. Any trustee who shall fail to qualify within fifteen days after being elected shall forfeit all rights to office, and the county superintendent of schools shall appoint to fill the vacancy. [*Act approved March 6th, 1897, § 13.*] (5th Sess. 143.)

863. *Qualification of trustee.*—Any person, male or female, who is a qualified voter at any election under this act, shall be eligible to office of school trustee in such district. [*Act approved March 6, 1897, § 14.*] (5th Sess. 143.)

864. *Registration of voters.*—The board of county commissioners of every county in which there shall be a school district of the first class shall, at least fifteen days before the school election for the year 1897, and thereafter at least twenty days before the next annual school election, by order entered on the minutes of the board, lay out such district into not less than two nor more than thirty registry precincts as may seem to the board most necessary, and shall define the boundaries thereof, which shall be known as School Registry Precinct No 1, School Registry Precinct No. 2, and so on. They shall at the same time the registry precincts are established, appoint one person, male or female,

qualified to vote at the coming election in such precinct, registry agent for such precinct, and of the number of registry agents appointed, they shall designate one as principal registry agent for said school district. All registry agents shall be appointed annually, and they are hereby authorized and empowered to administer oaths and affirmations, and to do such other acts as may be necessary to carry out the purposes of this Act. Before entering upon the duties prescribed in this Act, the registry agents must severally take and subscribe before an officer authorized to administer oaths the constitutional oath of office, and file the same with the county clerk of their respective counties. The Board of County Commissioners shall designate the place where the office of every registry agent appointed under this Act shall be kept, and they shall cause to be published in a newspaper in the district, or posted in at least three places in each registry precinct, a notice of registration, which shall describe the boundaries of each registry precinct, give the location of the office, and the name of the registry agent therefor, and the date when, and the hours during which the office of the registry agent will be open, and during which persons residing in said precinct may apply and be registered therein. This notice must be published or posted for three days preceding the day when the registration begins, and continued until registration is closed, and shall be issued and signed by the county clerk. Every registry agent appointed under this Act, shall open his office for the purpose of registering votes in his or her district on the tenth day preceding the day of the next annual election for school trustees: *Provided*, said day be not Sunday or a legal holiday; and should said day be Sunday or a legal holiday, then he or she shall open his or her office on the ninth day next preceding the day of election. He or she shall keep his or her office open between the hours of nine A. M. and twelve M. and one P. M. and five P. M. and from six P. M. until ten P. M. for the period of three days, not including Sunday or a legal holiday and during said time he or she shall register the names of all persons residing in his or her registry precinct, qualified and entitled to vote at the coming election, or who will have a vote thereat under the provisions of this Act. Registry agents shall not sit on Sundays or legal holidays, and while not required to register, during the hours of, from twelve to one P. M. and five to six P. M. they may nevertheless do so if they desire. Each registry agent shall be provided with an official register. He or she shall enter therein under the proper heading, the number and date of registration the name, with the first or given name in full and the nativity of the elector, together with the number or a particular description of the house, room or building where the elector resides so as to reasonably identify the same. The names shall be entered

in alphabetical order the surname being written first. Every person desiring to be registered for such election must apply to the registry agent for the precinct in which he or she shall reside, at his or her office during the hours of registration. No persons shall be registered by any registry agent unless such person is at the time a resident of his or her precinct. Every person applying to the registry agent shall, before he or she shall be entitled to have his or her name registered, take and subscribe to the following oath or affirmation, which shall be administered by the registry agent to-wit: "I do solemnly swear or affirm that I am a citizen of the United States, or that I am entitled to become a citizen of the United States, and it is my honest intention to become such before the school election day of this year; and that I am of the age of twenty-one years, and will have actually and not constructively, been a bona fide resident in Montana twelve months, and in the school district thirty days next preceding the day of election, and that I am not registered elsewhere in this school district for this election year, So help me God." The registry books shall be open at all times to the inspection of any electors of the district. [*Act approved March 6, 1897, § 14.*] (*5th Sess. 143.*)

Hauswirth v. Mueller, 25 Mont. 162; 64 Pac. 326.

865. *Duty of registry agents.*—The county commissioners in establishing the voting precincts and registry precincts shall so arrange them that each voting precinct in which a polling place shall be established shall be composed of a certain number of designated registry precincts. On the next day succeeding that on which the registration is closed each registry agent shall deliver to the county clerk of his or her county his or her official registry duly certified by himself or herself. The principal registry agent of each district shall immediately enter upon the work of making therefrom official check lists. He or she shall copy into books to be provided for that purpose and to be known as the official check lists for each election precinct, designating the number of the voting precinct thereon, all the names in alphabetical order contained in the several official registers which have been returned from the several registry precincts within said voting precinct, together with the other entries contained in the official registers and shall complete the making of one official check list in such manner for each election or voting precinct which has been established, within five days. The county commissioners shall allow him or her such assistance as may be necessary to complete such official check list within such time. When he or she has completed the official list he or she shall verify each of them by his oath that the same is correct according to his or her best information, knowledge and belief and deliver the same with all official registers to the county clerk who shall on the

day of election at or before the time for the polls to open, deliver the official check list for each election precinct or polling place to one of the judges thereof at such polling place. [*Act approved March 9, 1897, § 14.*] (5th Sess. 145.)

866. *Expenses of election.*—All the expenses necessarily incurred in the matter of holding elections for school trustees shall be paid out of the school funds of the district. For districts of the first class the county commissioners shall provide all the stationery, books and supplies and all bills and claims therefor and for the expenses of such election shall be presented to and allowed by the board of County Commissioners when audited by the County Auditor as other claims, and said board shall thereupon cause the same to be certified and delivered by the County Clerk to the proper board of school trustees, who shall cause the same to be paid out of the school funds of the district as other school expenses are paid. All registry agents shall receive the sum of four dollars per day each for the time which they shall be engaged in work of registration; judges of election in districts of the first class shall receive not to exceed five dollars per day each for all services connected with the election. Judges of election in other districts shall receive no compensation. The compensation hereby provided shall be paid in the same manner as other claims. [*Act approved March 6th, 1897, § 14.*] (5th Sess. 143-6.)

867. *Bond and compensation of trustees.*—Every School Trustee in a district of the first class, provided said District shall have a population not less than twenty thousand, shall give an official bond in the sum of ten thousand dollars, for the faithful discharge of his or her duties, which bond shall be approved by the District Judge and filed with the County Clerk, and every such trustee shall be entitled to receive out of the school funds of the district the sum of four dollars for each meeting of trustees, which he or she shall attend in giving the necessary attention to school business, not exceeding however one meeting each week, and he or she shall receive no compensation for his attendance at any meeting unless he or she attends throughout its entire session. The compensation here provided shall be audited and allowed by the Board of Trustees and entered upon their records. [*Act approved March 3rd, 1899.*] (6th Sess. 58-9.)

State v. Long, 21 Mont. 33; 52 Pac. 647.

ARTICLE V.

BOARD OF TRUSTEES.

Section 868. *Powers. Quorum.*

" 869. *Term.*

" 870. *Trustees of new district.*

- Section 871. Annual meeting. Clerk. Bond.*
“ 872. *Meeting of board.*
“ 873. *Financial statement.*
“ 874. *Chairman. Rules.*
“ 875. *Powers and duties.*
“ 876. *Pupils may attend in any district.*
“ 877. *Transportation of pupils.*
“ 878. *Duties concerning outhouses.*
“ 879. *Same.*
“ 880. *Penalty.*
“ 881. *Power over property.*
“ 882. *Shall not be interested in contracts.*
“ 883. *Liability.*
“ 884. *May establish high schools.*
“ 885. *Misdemeanor. Penalty.*
“ 886. *Repayment of loans.*
“ 887. *Must procure American flags.*
“ 888. *Flags to be displayed.*
“ 889. *Expenses of flags.*
“ 890. *Refunding bonds.*
“ 891. *Disposal of proceeds of bonds.*
“ 892. *District responsible on bonds.*
“ 893. *Must levy tax for interest, etc.*
“ 894. *Redemption of bonds.*
“ 895. *Payment of interest.*
“ 896. *Preparation of bonds.*
“ 897. *Felony. Penalty.*
“ 898. *Surplus money used for building.*”

868. (§ 1790.) *Powers. Quorum.*—Except when otherwise authorized by law, every school district is under the control of a board of school trustees consisting of three members, a majority of which constitutes a quorum for the transaction of business. [Act approved March 11, 1895.]

Campana v. Calderhead, 17 Mont. 551; 44 Pac. 84.

869. (§ 1791.) *Term.*—The term of office of school trustees is three years from the third Saturday next succeeding their election. [Act approved March 11, 1895.]

870. (§ 1792.) *Trustees of new district.*—When a new district is organized, such trustees of the old as reside within the limits of the new one shall be trustees in the new district, and the county superintendent must appoint the remaining trustees for the new and the old districts, who shall hold office until the next annual school election. [Act approved March 11, 1895.]

871. *Annual meeting. Clerk. Bond.*—The School Trustees shall meet annually on the third Saturday in April, and organize

by choosing one of their number chairman, and a competent person, not a member of the Board as Clerk. In districts of the first class, the clerk before entering upon the duties of his office, shall be required to give an official bond in the sum of ten thousand dollars conditioned for the faithful performance of his duties and to be approved and filed as other official bonds. [*Act approved March 3rd, 1899, § 4.*] (6th Sess. 59.)

872. *Meetings of board.*—The Board shall hold, in districts of the first class, at least one and not more than five meetings each month, for the transaction of its business; and in all districts at least four meetings each year shall be held, to-wit: On the third Saturdays of April, July, October and January at such places and hours as shall be fixed by the Board. A special meeting of the Board may be held upon the call of the chairman, or of any two members of the board. At least forty-eight hours written notice shall be given to each member of the Board of any special meeting, and no business transaction by the Board shall be valid unless transacted at a regular or special meeting thereof. [*Act approved March 3rd, 1899, § 5.*] (7th Sess. 59.)

873. (§ 1795.) *Financial statement.*—In school districts in which the fund shall equal or exceed twenty-five thousand dollars in each year, there shall be published in the newspaper which has contracted to do the public printing in the county in which the district is located, between the first and tenth day of June of each year, and between the first and the tenth day of December in each year, a financial statement covering the six preceding months, showing in detail, the amount of money received, the amount paid out, and for what purpose it was so paid, and the balance in the county treasurer's hands to the credit of the district at the time of the making of the statement. The costs of such publication shall be paid by order of the board of school trustees out of their respective school funds, and the price paid must not exceed per folio that allowed by the county commissioners for the publication of the financial statement of the county treasurer. [*Act approved March 11, 1895.*]

874. (§ 1796.) *Chairman. Rules.*—The chairman shall preside at all the meetings of the board, and shall perform such duties as usually pertain to such officer, and in accordance with the customary rules of order. [*Act approved March 11, 1895.*]

875. *Powers and duties.*—Every school board unless otherwise especially provided by law, shall have power and it shall be its duty:

1. To prescribe and enforce rules not inconsistent with law, or those prescribed by the Superintendent of Public Instruction for their own government of schools under their supervision.

2. To employ or discharge teachers, mechanics or laborers and to fix and order paid their wages; to determine the rate of

tuition of non-resident pupils, and to fix the compensation to be allowed the clerk for the time necessarily spent in the service of the district, as required by law, or as directed by the board.

3. To enforce the rules and regulations of the superintendent of public instruction for the government of schools, pupils and teacher and to enforce the course of study.

4. To provide for school furniture and for everything needed in the school house or for the use of the school board.

5. To rent, repair and insure school houses.

6. To build or remove school houses and to purchase or sell school lots when directed by a vote of the district so to do.

7. To hold in trust for their district all real or personal property, for the benefit of the school thereof.

8. To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age where the interest of the school requires such exclusion.

9. To provide books for indigent children on the written statement of the teacher that the parents of such children are not able to purchase them.

10. To require all pupils to be furnished with suitable books as a condition of membership in the school.

11. To exclude from school and school libraries, all books, tracts, papers and other publications of immoral and pernicious nature.

12. To require teachers to conform to the law.

13. To make an annual report, as required by law, to the county superintendent on or before the first day of October in each year, in the manner and form and on the blanks prescribed and furnished by the superintendent of public instruction.

14. To make a report directly to the superintendent of public instruction whenever instructed by him to do so.

15. To determine what branches, if any, in addition to those required by law shall be taught in any school in the district, subject to the approval of the county superintendent.

16. To visit every school in their district at least once in each term and to examine carefully into its management, condition and want. This clause applies to each of the trustees.

17. To provide for each school house separate out houses for the sexes. [*Act approved March 8th, 1897, § 5.*] (*5th Sess. 130-131.*)

Campana v. Calderhead, 17 Mont. 548; 44 Pac. 83.

876. *Pupils may attend in any district.*—Whenever a pupil residing in one district desires to attend school in another district, such pupil shall be permitted to do so; *Provided*, that the board may refuse pupils from such districts upon the ground of insufficient room: and *Provided further*, that any board of

trustees may in their discretion, transfer school monies due by apportionment to such pupils to the district in which they may attend school. [*Act approved February 24th, 1903.*] (8th Sess. Chap. 26.)

877. *Transportation of pupils.*—That the trustees of any school district in the State of Montana may, when they shall deem it for the best interest of all the pupils residing in such district close their school and send the pupils of the district to another district, and for such purpose are hereby empowered to expend any monies belonging to their district for the purpose of paying for the transportation of the pupils from their district to such other districts and paying their tuition. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 68.)

878. (§ 1798.) *Duties concerning outhouses.*—It is hereby made the duty of the school trustees of all school districts in this state to provide separate privies or outhouses for the use of the sexes at all school houses where the same do not exist, and to see that the same are kept in good repair, and in a clean condition. Such privies or outhouses must be located and built in such a manner as to secure privacy. In all cases where there is no fence dividing the play yards of the sexes, the privies or outhouses herein named shall be separate and distinct buildings, and situated at least twenty feet apart. [*Act approved Feby. 25, 1893.*]

879. (§ 1799.) *Same.*—It shall be the duty of all trustees, teachers, janitor or janitors of school districts to see that all privies or outhouses are kept in good repair and in a clean condition. [*Act approved Feby. 25, 1893.*]

880. (§ 1800.) *Penalty.*—Any trustee or trustees, teacher, janitor or janitors failing to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not exceeding ninety days or both such fine and imprisonment in the discretion of the court. [*Act approved Feby. 25, 1893.*]

881. (§ 1801.) *Power over property.*—The board of trustees of each school district shall have custody of all school property belonging to the district, and shall have power in the name of the district, or in their own names as trustees of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district and all conveyances of real estate made to the district or to the trustees thereof, shall be made to the board of trustees of the district and to their successors in office; said board, in the name of the district shall have power to transact all business necessary for maintaining schools and protecting the rights of the district. [*Act approved March 11, 1895.*]

882. (§ 1802.) *Shall not be interested in contracts.*—It shall be unlawful for any trustee to have any pecuniary interest, either directly or indirectly, in any erection of school houses, or for warming, ventilating, furnishing, or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or to accept any compensation or reward for services rendered as trustee. [*Act approved March 11, 1895.*]

883. (§ 1803.) *Liability.*—Any board of trustees shall be liable as trustees, in the name of the district, for any judgment against the district, for any salary due any teacher on contract, and for all debts legally contracted under the provisions of this title, and they shall pay such judgments or liabilities out of the school moneys to the credit of such district. [*Act approved March 11, 1895.*]

Jay v. School District, 24 Mont. 229; 61 Pac. 253. This section does not authorize the entry of a judgment against a school district for the unpaid salary of a school teacher, where the district admits

the claim, but has no funds applicable to its payment, and the failure to pay the salary is not a violation of duty by the trustees.

884. (§ 1804.) *May establish high schools.*—Whenever the interests of the district require it a board of trustees may establish a high school, employ a principal teacher and subordinate teachers, and grade the school into departments and classes. [*Act approved March 11, 1895.*]

885. (§ 1805.) *Misdemeanor. Penalty.*—When any school officer is suspended, by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office; and such officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be guilty of a misdemeanor, and shall be punished by a fine, in the discretion of the court, not exceeding one hundred dollars. [*Act approved March 11, 1895.*]

886. (§ 1806.) *Repayment of loans.*—Whenever heretofore money has been loaned or advanced to the board of school trustees of any district, for the erection of a school house or school houses therein, by any person or corporation, in reliance upon the proceeds of the sales of bonds for the repayment of the same, the issuance of which bonds have been voted for by a majority of the electors of such district, voting at an election held for the purpose of authorizing the issuance of the same for the erection of a school house or school houses, which said money has been used by such board of school trustees in the erection of a school house or school houses in such district, but which bonds when issued have been adjudged and held to be void or invalid by the supreme court of the state, the money so loaned or advanced may

be repaid, together with the interest thereon covering the period for which interest has not been paid, at the rate specified in said bonds so held to be void; said payment to be made by the board of school trustees to the person or corporation who or which had loaned or advanced the same, from the proceeds of the sale of any bonds thereafter issued for the purpose of building one or more school houses in said district, or for any other school purpose. [*Act approved Feby. 18, 1895.*]

887. (§ 1807.) *Must procure American flags.*—That the trustees of the several school districts of the state of Montana, shall within ninety days from and after the passage of this act, procure by purchase or donation, an American flag with accompanying necessary poles and ropes, etc., for each and every school house in their respective districts. Said flags shall be of dimensions not less than four by six feet, and they shall be made from durable material. [*Act approved Feby. 26, 1895.*]

888. (§ 1808.) *Flags to be displayed.*—It shall be the duty of the school trustees to cause said flags to be displayed over such school houses every day, during the sessions thereof, provided the weather is such as to permit the display without injury to the flags. [*Act approved Feby. 26, 1895.*]

889. (§ 1809.) *Expenses of flags.*—The school trustees are hereby authorized and empowered to use such portion of the school funds as remain in their hands and which is not otherwise appropriated, for the purchase and erection of the flags, poles, etc. [*Act approved Feby. 26, 1895.*]

890. *Refunding bonds.*—The School Trustees of any School District of the State of Montana, shall have, and are hereby given in addition to the power already conferred on them, authority to issue on the credit of their respective districts, coupon bonds, (and sell or dispose of the same) for the purpose of providing the necessary funds to pay maturing, redeemable, or optional bonds, under the following conditions, to-wit:

1. When there is not sufficient money to the credit of the School District applicable to pay any of said bonds.

2. When in the judgment of the School Trustees to levy and collect a special tax for the purpose of paying any of said bonds, would be a hardship and a burden to the School District.

3. All bonds issued under the provisions of this section of this Act shall bear upon their face the words "Refunding School Bonds" and shall also recite in the body of the bond that "this bond is issued for the purpose of providing funds to pay maturing and outstanding bonds."

4. Said bonds shall bear interest at a rate not to exceed six per cent per annum (and interest may be payable semi-annually) and payable and redeemable within a period not exceeding twenty years from the date of issue; *provided* said bonds shall not ex-

ceed in amount the face value of the bonds (and any accrued interest thereon) which they are issued to replace.

5. The trustees shall fix the denominations, term, rate and form of said bonds not inconsistent with the requirements hereinbefore set forth; and may issue, dispose of or sell such bonds at any time deemed necessary and expedient to enhance, preserve and maintain the credit of their respective districts.

6. Said bonds, when offered for sale, shall be advertised for sale in not less than one newspaper of general circulation, published in the state of Montana, for a period of not less than four weeks preceding the date fixed for sale of said bonds; said advertisement shall briefly describe the bonds, stating the time when, and the place where said sale shall take place; *Provided*, that said bonds shall not be sold at less than their par value, and the trustees are authorized to reject any bids made, and sell said bonds at private sale, or exchange the same for outstanding bonds, if they deem for the best interests of the districts so to do, and it shall not be necessary to hold any election or submit the matter of the issuance of the bonds authorized by this section of this Act, to the electors of the school district.

7. Said bonds and coupons (attached) shall be signed by the chairman of the Board of Trustees and the school clerk of the District, *provided*, a lithographic or engraved fac simile of the signatures of the chairman and clerk may be affixed to the coupons, only when so recited in the bonds, and the corporate seal of the School District shall be affixed to each bond.

8. Each bond so issued shall be registered by the County Treasurer of the County wherein such School District is located, in a book provided for the purpose, which shall show the date, number, term and amount of each bond, and the person or persons to whom the bonds are issued and sold. [*Act approved March 14th, 1901, § 1.*] (*7th Sess. 124-5.*)

891. (§ 1811.) *Disposal of proceeds of bonds.*—All moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which said school district is located, and shall be immediately available to apply for the purpose authorized and no other purpose. [*Act approved March 2, 1895.*]

892. (§ 1812.) *District responsible on bonds.*—The faith of each school district is solemnly pledged for the payment of the interest and redemption of the principal of the bonds which shall be issued under this act. And for the purpose of enforcing the provisions of this act, each school district shall be a body corporate, which may sue and be sued by, or in the name of, the board of school trustees of such district. [*Act approved March 2, 1895.*]

893. (§ 1813.) *Must levy tax for interest, etc.*—The school

trustees of each district shall ascertain the amount and levy annually, a tax necessary to pay the interest, when it becomes due, and provide a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said school district and be collected in the same manner as other taxes for school purposes. [*Act approved March 2, 1895.*]

894. (§ 1814.) *Redemption of bonds.*—When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the number thereof, and the bonds bearing the lowest number shall be redeemed first, in their order; *and provided*, That such redemption shall be made at some regular interest period as set forth in the bond; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bond or bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed, by writing or stamping across the face of such bond or bonds, in ink, the words, “Redeemed and Cancelled,” and the date of such redemption. And the bonds paid shall be exhibited to the board of county commissioners at their first meeting thereafter. [*Act approved March 2, 1895.*]

895. (§ 1815.) *Payment of interest.*—The county treasurer shall pay out of any moneys belonging to the school district, the interest upon any bonds issued by authority of this act, by such district, when the same shall become due, upon the presentation at his office, of the proper coupon, which shall show the amount due, and the number of the bond to which it belongs; and all coupons so paid shall be cancelled and exhibited to the board of county commissioners at their first meeting thereafter. [*Act approved March 2, 1895.*]

896. (§ 1816.) *Preparation of bonds.*—The school trustees of any school district shall cause to be printed or lithographed, at the lowest rate, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district. [*Act approved March 2, 1891.*]

897. (§ 1817.) *Felony. Penalty.*—If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for in this act, they shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year, nor more than ten years. [*Act approved March 2, 1891.*]

898. (§ 1818.) *Surplus money used for building.*—County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this article, and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, after providing for the expenses of not less than eight months' school; may on a vote of the qualified electors of said district, be used for the purpose of building and improvement. If any school money shall be paid by the authority of the board of trustees for any purpose not authorized by this section, the trustees consenting to such payment shall be liable to the district for the repayment of such sum and a suit to recover the same may be brought by the county attorney or if he shall refuse to bring the same, a suit may be brought by any tax-paying elector in the district. [*Act approved March 2, 1893.*]

ARTICLE VI.

DISTRICT CLERKS.

899. *Duties. Compensation.*—The duties of the district clerk shall be as follows:

1. To attend all meetings of the board of trustees; but if he shall not be present, the board of trustees shall select one of their number as a clerk who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his record in a book to be furnished by the board of trustees and he shall preserve a copy of all reports made to the County Superintendent and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successors.

2. To keep accurate and detailed accounts of all receipts and expenditures of school moneys. At each annual school meeting the district clerk shall present his record book for public inspection and shall make a statement of the financial condition of the district and of the action of the trustees and such record must always be open for public inspection. [*Act approved March 8, 1897, § 6.*] (*5th Sess. 131-132.*)

3. To make annually, between the first and twentieth day of September of each year, an exact census of all the children and youth between the ages of six and twenty-one years residing in the district; and shall specify the name, sex, age and date of birth of such children and the names of their parents or guardians. He shall take specifically and separately a census of all children under six years of age and shall specify the name, sex, age and date of birth of such children. All children under twenty-one years of age who may be absent from home for any cause, shall be included by the district clerk in this census list of the

city, town or district in which their parents reside. He shall make a full report thereof on the blanks furnished for this purpose, under oath, to the County Superintendent thereafter, and deliver a copy to the school trustees. For taking the census the district clerk shall be paid by the Board of Trustees, from the county school money to the credit of the district, in the same manner as other contingent expenses are paid, at a rate not exceeding ten cents for each child's name returned by him. He shall receive such other compensation for other services as may be allowed by the Board of Trustees. In case any district clerk shall fail to take the census provided in this act, at a proper time, and if through such neglect the district shall fail to receive its apportionment of school moneys, said school clerk shall be individually liable to the district for the full amount so lost, and it may be recovered on a suit brought by any citizen of such district, in the name of and for the benefit of the district. [Act approved March 5, 1907.] (10th Sess. Chap. 97.)

ARTICLE VII.

TEACHERS.

- Section 901. *Certificate of qualification.*
- " 902. *Teacher's Report.*
- " 903. *Duties.*
- " 904. *Construction of Teacher's contract.*
- " 905. *Powers.*
- " 906. *Duties.*
- " 907. *Penalty.*
- " 908. *Qualification, as to age.*
- " 909. *Dismissal. Appeal.*
- " 910. *Suspension of teacher's certificate.*

901. *Certificate of qualification.*—No person shall be accounted as a qualified teacher, within the meaning of the school law, who has not first appeared before the County Superintendent of the County in which he proposes to teach and received a certificate setting forth his qualifications; or who has not received a temporary certificate from the County Superintendent; or who has not a State Certificate or Life Diploma from the State Board of Education, or a certificate from some other county, endorsed by the County Superintendent; or a diploma from the State Normal College, *Provided*, that special certificates may be granted to persons employed to teach either music, elocution, physical culture, drawing, modern languages, penmanship, or in the first Primary or Kindergarten Department; *and provided further*, that nothing herein contained shall be so construed as to invalidate any certificate now in force. [Act approved March 5, 1903, § 1.] (8th Sess. Chap. 79.)

902. (§ 1841.) *Teacher's report.*—Every teacher employed in any public school shall make an annual report to the county superintendent on or before the tenth day of September next after the close of each school year, in the form and manner and on the blanks prescribed by the superintendent of public instruction. A copy of such report shall be furnished to the district clerk.

Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close of such term, and any teacher who may be teaching any school at the close of the school year, shall in his or her annual report, include all statistics from the school register for the entire school year notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as shall be required in pursuance of law by the superintendent of public instruction. No board of trustees shall draw any order or warrant for the salary of any teacher, for the last month of his or her service, until the reports herein required shall have been made and received; *Provided*, That in all schools acting under the direction of a city superintendent, teachers shall be required to report to such superintendent, whose report shall be accepted by the county superintendent and the trustees in lieu of the teacher's reports; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's reports. [Act approved March 11, 1895.]

Jay v. School District, 24 Mont. 226; 61 Pac. 252. Teachers must make these annual reports and are required to re-

port at the end of the term for which they are employed.

903. (§ 1842.) *Duties.*—It shall be the duty of the teacher of every public school in this state to keep, in a neat and business-like manner, a daily register in such form and upon such blanks as shall be prepared by the superintendent of public instruction, and no board of trustees shall draw any warrant for the salary of any teacher for the last month of his services in the school at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if any teacher shall refuse or neglect to comply with such regulations, then the board of trustees shall be authorized to withhold any warrant for salaries due, until such teacher shall comply therewith. No teacher shall be employed except by written order of a majority of the board of trustees, at a regular or special meeting thereof, nor unless the holder of a legal teacher's certificate, in full force and effect. [Act approved March 11, 1895.]

904. (§ 1843.) *Construction of teacher's contract.*—In every

contract between any teacher and board of trustees a school month shall be construed as twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on Christmas day, the first day of January, the fourth day of July, the twenty-second day of February, the thirtieth day of May, the first Monday in September, election day in November, and the day appointed by the president of the United States or the governor of this state as a day of thanksgiving. And no deduction from the teacher's time or wages shall be made by reason of the fact that a school day happens to be one of the days referred to in this section. And any contract made in violation of this section shall have no force or effect as against the teacher. [*Act approved March 11, 1895.*]

905. (§ 1844.) *Powers.*—Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to school or during intermission or recess; to suspend from school any pupil for good cause; *Provided*, That suspension shall be reported to the trustees as soon as practicable for their decision. [*Act approved March 11, 1895.*]

906. (§ 1845.) *Duties.*—It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship. [*Act approved March 11, 1895.*]

907. (§ 1846.) *Penalty.*—Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. [*Act approved March 11, 1895.*]

908. (§ 1847.) *Qualification, as to age.*—No person is eligible to teach in any public school in this state, or to receive a certificate to teach, who has not attained the age of eighteen years. [*Act approved March 11, 1895.*]

909. (§ 1848.) *Dismissal. Appeal.*—In case of the dismissal of any teacher before the expiration of any written contract entered into between such teacher and board of trustees for alleged unfitness or incompetence, or violation of rules, the teacher may appeal to the county superintendent; and if the superintendent decides that the removal was made without good cause, the teacher so removed must be reinstated, and shall be entitled to compensation for the time lost during the pending of the appeal. [*Act approved March 11, 1895.*]

910. (§ 1849.) *Suspension of teacher's certificate.*—Should any teacher employed by the board of school trustees for a

specified time, leave the school before the expiration of such time, without the consent of the trustees in writing, said teacher shall be guilty of unprofessional conduct, and the county superintendent is authorized, upon receiving notice of such fact, to suspend the certificate of such teacher for the period of six months. Should such teacher be the holder of a state certificate or life diploma the county superintendent shall report the delinquency of the teacher to the state board of education who are thereupon authorized to suspend said diploma for the period of one year.
[Act approved March 11, 1895.]

ARTICLE VIII.

SCHOOLS.

Section 911. Common school defined.

“ 912. *Course of study.*

“ 913. *School day.*

“ 914. *Sectarian publications forbidden.*

“ 915. *School year.*

“ 916. *Free kindergartens.*

“ 917. *Pupils.*

911. (§ 1860.) *Common school defined.*—A common school is hereby defined to be one that is maintained at the public expense in each school district, and under the supervision of the board of trustees. Every common school not otherwise provided for by law shall be open to the admission of all children between the ages of six and twenty one years residing in the school district, and the board of trustees shall have the power to admit children not residing in the district as hereinbefore provided.
[Act approved March 11, 1895.]

Campana v. Calderhead, 17 Mont. 551; 44 Pac. 84.

912. *Course of study.*—All common schools shall be taught in the English language. And instructions shall be given in the following branches, viz:—Reading, Penmanship, Written Arithmetic, Mental Arithmetic, Orthography, Geography, English, Grammar, Physiology and Hygiene. With special reference to the effect of alcoholic stimulants and Narcotics on the human system.

History of the United States and of Montana.

Also a system of humane treatment of animals as embodied in the laws of Montana.

Such instruction to consist of, at least, two (2) lessons of not less than ten minutes each per week.

The principal or teacher in every school shall certify in each of his or her reports that such instruction has been given in the school under his or her control.

Attention must be given during the entire school course to the

cultivation of manners. To the laws of health. Physical exercise. Ventilation and temperature of the school room. [*Act approved February 24th, 1903.*] (8th Sess. Chap. 23.)

913. *School day.*—The school day shall be six hours in length, exclusive of an intermission at noon; but any board of trustees in any district having a population of five hundred or more may fix as the school day a less number of hours than six; *Provided* that it be not less than four hours, except in the lowest primary grades where the pupils may be dismissed after an attendance of two hours. [*Act approved March 8th 1897, § 7.*] (5th Sess. Chap. 132.)

914. (§ 1863.) *Sectarian publications forbidden.*—No publication of a sectarian, partisan or denominational character must be used or distributed in any school or be made a part of any school library; nor must any sectarian or denominational doctrine be taught therein. Any school district the officers of which knowingly allow any school to be taught in violation of these provisions, forfeits all rights to any state or county apportionment of school moneys; and upon satisfactory evidence of such violation, the superintendent of public instruction and county superintendent must withhold both state and county apportionments. [*Act approved March 11, 1895.*]

915. (§ 1864.) *School year.*—The school year shall begin on the first day of September, and end on the thirty-first day of August. [*Act approved March 11, 1895.*]

Jay v. School District, 24 Mont. 229; 61 Pac. 253.

916. *Free kindergarten.*—The school board of any school district in the State shall have power to establish and maintain free kindergartens in connection with the public schools of said district, for the instruction of children between three and six years of age, residing in said district and shall establish such courses of training, study and discipline, and such rules and regulations governing such preparatory or kindergarten schools as said board may deem best; *Provided*, That nothing in this act shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county school funds among the several counties and districts in this State; *Provided, further*, That the cost of establishing and maintaining such kindergartens shall be paid from the school funds of said districts, and the said kindergartens shall be a part of the public school system and governed as far as practicable in the same manner and by the same officers as is now, or hereafter may be, provided by law for the government of the other public schools of the State; *Provided further*, That the teachers of kindergarten schools shall pass such examination on kindergarten work as the kindergarten department of the State Normal School may direct, provided that a certificate from a kinder-

garten teacher's institute of recognized standing shall be recognized by the State Normal School. [*Act approved February 16th, 1899, § 1.*] (*6th Sess. 64-5.*)

ARTICLE IX.

PUPILS.

917. (§ 1870.)—All pupils who may be attending public schools shall comply with the regulations established in pursuance of law for government of such schools; shall pursue the required course of study, and shall submit to the authority of the teachers of such schools. Continued and wilful disobedience and open defiance of the authority of the teacher shall constitute good cause for expulsion from school. Any pupil who shall, in any way cut, deface or otherwise injure any school house, furniture, fence or outbuilding thereof, or any book belonging to other pupils, or any book belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damages, on complaint of the teacher or any trustee and upon proof of the same. [*Act approved March 11, 1895.*]

ARTICLE X.

FREE COUNTY HIGH SCHOOLS.

- Section 918. Any county may establish free high schools.*
- “ 919. *Petition for establishment and location.*
- “ 920. *Election, voting.*
- “ 921. *Canvass of returns.*
- “ 922. *Special meetings for county commissioners.*
- “ 923. *Trustee's oath, bond and term of office. Vacancies.*
- “ 924. *Quorum. Officers of board.*
- “ 925. *Tax levy. Bonds for buildings.*
- “ 926. *Submission to electors of question of bond issue.*
- “ 927. *Payment of bonds.*
- “ 928. *Assessment for maintenance.*
- “ 929. *Record of Board. Warrants.*
- “ 930. *Sites. Leasing buildings.*
- “ 931. *Employment of teachers.*
- “ 932. *Principal may make rules.*
- “ 933. *Courses of study.*
- “ 934. *Admission of pupils.*
- “ 935. *Pupils from adjoining counties.*
- “ 936. *Compensation of trustees.*
- “ 937. *Diploma to admit to state collegiate institutions.*

Section 938. Prior acts validated.

“ 939. *Same.*

“ 940. *Bonds legalized.*

918. *Any county may establish free high school.*—Any county in the state may establish a county free high school on the condition and in the manner hereinafter prescribed, for the purpose of affording better educational facilities for pupils more advanced than those attending district schools. [*Act February 25, 1907, § 1.*] (*10th Sess. Chap. 29.*)

919. *Petition for establishment and location.*—Whenever one hundred freeholders in any county shall petition the Board of County Commissioners, requesting that a high school be established in their county, the county clerk shall give twenty days notice, by publication in the official paper of the county, that such petition has been filed, and that any village, town or city may become a candidate for the location of said high school upon petition of not less than fifty freeholders of said village, town or city, requesting that said place be named as a candidate for the location of said school. All nominations of places for the location of said school shall be filed with the Board of County Commissioners within thirty days from the date of the first publication of said notice. Any number of places may be candidates for the location of said school, but no freeholder shall append his name to more than one petition. [*Act February 25, 1907, § 2.*] (*10th Sess. Chap. 29.*)

920. *Election. Voting.*—At the expiration of thirty days from the date of the first publication of said notice, the County Commissioners shall call an election and appoint precinct judges and clerks. Said election shall be conducted in accordance with the general election laws of the state. The county clerk shall give twenty days notice of such election, by publication in the official paper of the county, that the question of establishing a county free high school in said county, and the location thereof, will be submitted to the qualified electors of said county at a designated time. The notice shall distinctly specify the places which are candidates in the forthcoming election. The qualified electors shall vote, by ballot, for or against the establishment of a county free high school, and any elector who shall vote for the establishment of the county free high school, may vote for not more than one of the places named upon said ballot as a candidate for the location of said school. The ballot shall be, substantially in the following form:

For a County High School at

Helena,

Marysville,

Against a County High School.

An elector desiring to vote for the establishment of a high

school, shall do so by placing an X before the name of the town at which he desires the high school to be located, which shall be a vote in favor of such town. An elector desiring to vote against the establishment of a high school shall do so by placing an X before the clause "Against a County High School," and shall not vote for any town. [*Act February 25, 1907, § 3.*] (*10th Sess. Chap. 29.*)

921. *Canvass of returns.*—After the election, the ballots on said question shall be canvassed in the manner provided for general county elections, and, if the vote in favor of establishing a county free high school shall be a majority of all votes cast upon said proposition, the Board of County Commissioners shall proceed to canvass the vote for the different candidates for the location of said school, and the village, town or city having the largest number of votes for the location of said school, *provided* said number of votes be a majority of all votes cast in favor of the measure, shall be declared to be the place for the location thereof. If the election results in favor of establishing such high school, and any candidate for its location has a majority, the Board of County Commissioners, by an order duly entered on their minutes, shall so declare this fact, and the Board shall immediately thereafter appoint six persons, residents and taxpayers of the county, at least three of whom shall be residents of the village, town or city where the school is located, who shall, with the County Superintendent of Schools, constitute a Board of Trustees for said school.

In case of a tie vote between two or more of the candidates having the highest number of votes for the location of said school, the county commissioners shall immediately call another election in the manner provided by law for general county elections, at which the only question to be submitted shall be the location of said school, and only the names of those candidates so tied shall appear upon the ballot. [*Act February 25, 1907, § 4.*] (*10th Sess Chap 29.*)

922. *Special meetings of county commissioners.*—If such petition is filed at any time when the Board of County Commissioners is not in session, the county clerk shall notify the commissioners thereof, and a special meeting shall be held to call the necessary election herein provided for. [*Act February 25, 1907, § 5.*] (*10th Sess. Chap. 29.*)

923. *Trustee's oath, bond and term of office; vacancies.*—The trustees of county free high schools, except the County Superintendent of Schools, shall, within thirty days after appointment, qualify by taking the oath of office, and by giving such bond as may be required by the Board of County Commissioners for the faithful discharge of their duties. Said trustees, first appointed, except the County Superintendent of Schools, shall be divided

into two classes of three each; the term of office of each class to be one and two years respectively, the respective terms to be decided by lot. The term of office of those in the first class shall expire one year from the third Saturday in April following their appointment, and the term of those in the second class shall expire two years from the third Saturday in April following their appointment.

The county commissioners shall appoint three trustees at their regular quarterly meeting in March of each year, and shall fill all vacancies as soon as practicable after the same occur.

The term of office of trustees, other than the County Superintendent of Schools, except of those first appointed, as hereinbefore provided, shall be for two years and until their successors are appointed and qualified. Appointments to fill vacancies shall be for the remainder of the unexpired term, provided that, in all appointments of trustees under this Act, there shall be at least three trustees who are residents of the village, town or city in which said high school is located. Whenever any vacancy occurs in said Board of Trustees, from any cause, the secretary of the board shall immediately certify such vacancy to the Board of County Commissioners, who shall fill such vacancies within sixty days thereafter. Said Board of High School Trustees shall be governed, as to the time and place of meeting, as far as practicable, by the provisions of the general school law of the state. [Act February 25, 1907, § 6.] (10th Sess. Chap. 29.)

924. *Quorum. Officers of board.*—A majority of said board shall constitute a quorum for the transaction of all business. At their first meeting in each year the trustees shall choose, from their number, a president, vice president and a secretary, who shall hold office for one year or until their successors have been appointed and qualified, and said trustees shall have authority to make all necessary rules for their government, not inconsistent with the law. The county treasurer of the county shall be the treasurer of the board and the custodian of all funds available for school purposes under the provisions of this Act. Payments shall be made by said treasurer upon warrants drawn against said funds duly signed by the president, or vice president and secretary. [Act February 25, 1907, § 7.] (10th Sess. Chap. 29.)

925. *Tax levy. Bonds for buildings.*—At said first meeting, or at some succeeding meeting called for such purpose, said trustees shall make an estimate of the amount of funds needed for building purposes, for payment of teachers' wages and for payment of contingent expenses, and they shall present to the Board of County Commissioners a certified estimate of the rate of tax required to raise the amount desired for such purposes, and the Board of County Commissioners must levy such tax as other county taxes are levied. But in no case shall the tax for such

purpose exceed in one year the amount of ten mills on the dollar on the taxable property of the county, and when the tax is levied for the payment of teachers' wages and for contingent expenses only, it shall not exceed three mills on the dollar. Provided, that said trustees may, if in their judgment they think best, bond the county for the purpose of raising the money necessary to build or purchase and equip the high school herein provided for, and to purchase a suitable site therefor. But no bonds shall ever be issued to pay for teachers' wages, or for the general expenses in maintaining said school. [*Act February 25, 1907, § 8.*] (*10th Sess. Chap. 29.*)

926. *Submission to electors of question of bond issue.*—The Secretary of the Board of County Free High School Trustees, whenever a majority of the board shall so decide, shall certify to the Board of County Commissioners that they have decided to submit to the electors of the county the question whether county bonds shall issue for the purpose of the erection or purchase of a building for high school purposes and the equipment thereof, and for a suitable site therefor, and shall include in such certificate the amount of such bonds, which amount shall not exceed the sum of one hundred thousand (\$100,000.00) dollars in any one county. Such bonds may run for a term of twenty years, or less, but no longer, *provided*, that any such issue of bonds shall not increase the indebtedness of any county beyond the maximum limit fixed by the State Constitution. That, as soon as practicable after receiving such certificate, the Board of County Commissioners shall proceed to submit the question of issuing said bonds to the qualified electors of the county in the manner provided by law for the issuance of other county bonds. If such bonds are issued the county commissioners, at the time of making the levy of taxes for county purposes each year, must levy a tax for that year upon the taxable property in the county for the interest and redemption of said bonds, and such taxes must not be less than sufficient to pay the interest on said bonds for that year and such proportion of the principal as is to become due during such year, and, in any event, must be high enough to raise annually, for the first half of the term, a sufficient sum to pay the interest thereon, and during the balance of the term, high enough to pay said annual interest and to pay annually a portion of the principal of said bond, equal to the sum produced by taking the whole amount of said bonds outstanding and dividing it by the number of years said bonds have to run, and all money so levied, when collected, must be paid into the county treasury to the credit of the county free high school, kept in a separate fund, and be used for the payment of principal and interest on said bonds, and for no other purpose; *provided*, however, that the accumulated money may be invested as is provided

for the investment of money collected for the payment of school district bonds. Said tax shall be levied and collected in the same manner as other county taxes. [*Act February 25, 1907, § 9.*] (*10th Sess. Chap. 29.*)

927. *Payment of bonds.*—Said bonds shall be paid, principal and interest, in the manner provided for the payment of other county bonds. [*Act February 25, 1907, § 10.*] (*10th Sess. Chap. 29.*)

928. *Assessment for maintenance.*—In case bonds are issued, the trustees, in making estimates for the maintenance of the high school, shall not include estimates for building or other purposes for which said bonds are issued. [*Act February 25th, 1907, § 11.*] (*10th Sess. Chap. 29.*)

929. *Record of board; warrants.*—The said Board of High School Trustees shall keep a record of all the official acts done by said board, and shall keep a full record of all warrants issued against moneys belonging to said county free high school. Payments of money can only be made upon warrants drawn against said funds belonging to said high school; and the warrants so drawn must specify, upon their face, the purpose for which the warrant is drawn. [*Act February 25th, 1907, § 12.*] (*10th Sess. Chap. 29.*)

930. *Sites. Leasing buildings.*—The said Board of Trustees shall proceed, as soon as practicable after their appointment and qualification, to select, at the place designated as the location for the county free high school, the best site that can be obtained, and the title thereto, upon securing said site by purchase or otherwise, shall vest in the county; the trustees shall then proceed to make purchase of material, and to let such contracts for necessary school buildings as they may deem proper. They shall not, however, make any purchase, or enter into any contract, whereby obligations are assumed in excess of the amount of funds on hand or available through the levy of taxes for the current year, or the issuance of bonds. The trustees may, at their discretion, lease suitable buildings for the use of the high school while new buildings are in process of erection, or may contract with the trustees of the local school district, or any other parties, for the use of suitable buildings for high school purposes for such time as may be deemed best for the interests of the county. [*Act February 25th, 1907, § 13.*] (*10th Sess. Chap. 29.*)

931. *Employment of teachers.*—After suitable buildings are secured, as herein before provided, for the carrying on of the county free high school, the trustees shall employ some suitable person to take charge of said school, who shall possess such qualifications as are now required to be possessed by a city superintendent of schools, except that said principal shall not be required to possess more than three years experience in teaching; and the

trustees shall furnish such assistant teachers as they may deem necessary, and shall designate the salaries which shall be paid to said principal and assistant teachers. [*Act February 25th, 1907, § 14.*] (*10th Sess. Chap. 29.*)

932. *Principal may make rules.*—The principal of any such high school, with the approval of the Board of Trustees, shall make such rules and regulations as he may deem proper in regard to the studies, conduct and government of the pupils under his charge; and if any such pupils will not conform to, nor obey, the rules of the school, they may be suspended or expelled therefrom by the Board of Trustees. [*Act February 25th, 1907, § 15.*] (*10th Sess. Chap. 29.*)

933. *Course of study.*—There shall be provided such courses of study as will properly fit the student attending said high school for admission to the collegiate class of any of the state educational institutions, and such courses of study shall contain the work now provided for accredited high schools by the State Board of Education. [*Act February 25th, 1907, § 16.*] (*10th Sess. Chap. 29.*)

934. *Admission of pupils.*—Tuition shall be free to all pupils residing in the county where the school is located. The Board of Trustees shall make such rules and regulations as they deem proper in regard to age and grade of attainments essential to entitle pupils to admission to such school; *provided*, that no person shall be admitted to such high school who shall not have passed a satisfactory examination or who does not hold an eighth grade common school certificate. If there should be more applicants than can be accommodated at any one time, each district shall be entitled to send its equal number of pupils, according to the number of pupils it may have as shown by the last report to the County Superintendent of schools; and the boards of the respective school districts shall designate such pupils as may attend, subject to the proviso above. [*Act February 25, 1907, § 17.*] (*10th Sess. Chap. 29.*)

935. *Pupils from adjoining counties.*—If, at any time, the school can accommodate more pupils than apply for admission from the county in which the school is situated, the vacancies may be filled by applications from other counties, upon the payment of such tuition as the Board of Trustees may prescribe; but at no time shall such pupils continue in such school to the exclusion of pupils residing in the county in which such school is located. [*Act February 25, 1907, § 18.*] (*10th Sess. Chap. 29.*)

936. *Compensation of trustees.*—The trustees who do not reside at the place where said high school is established are entitled to mileage in attending the meetings of the board. The trustees of said high school shall serve without compensation, but may pay their secretary such reasonable compensation as may

be determined, and the board shall make such reports, from time to time, as the County Superintendent of Schools, or the State Superintendent of Public Instruction, may require. [*Act approved February 25, 1907, § 19.*] (10th Sess. Chap. 29.)

937. *Diploma to admit to state collegiate institutions.*—Upon the presentation of a certificate of graduation from any such county high school, within eighteen months from the date of the same, to any state institution of learning, the person, presenting the same, may be admitted without further examination to said institution of learning. [*Act February 25, 1907, § 20.*] (10th Sess. Chap. 29.)

938. *Prior acts validated.*—All acts and things of any kind, whatsoever, done by any Board of County Free High School Trustees, or by any Board of County Commissioners, of this State prior to the passage of this Act, under the provisions of the Act of March 3, 1899, for the establishment of county free high schools, or under the Act of March 14, 1901, or the Act of March 5, 1903, amending certain Sections of the Act of March 3, 1899, shall be, and are hereby ratified and declared to be valid, and of full force and effect. [*Act February 25, 1907, § 21.*] (10th Sess. Chap. 29.)

939. *Same.*—That all Acts heretofore done by any board of county commissioners in this State in connection with the submission to the electors of their county of the question of establishing and locating a county free high school, and upon which acts such question was in fact submitted to the electors of such county, and a majority of all votes cast at such election were in favor of the establishment and location of such high school and so found and declared by the board of county commissioners, shall be, and are hereby ratified and declared to be valid and of full force and effect. [*Act approved March 1, 1907, § 1.*] (10th Sess. Chap. 61.)

940. *Bonds legalized.*—That all bonds issued or authorized to be issued, at any time prior to the passage of this Act, by the board of trustees of any county free high school in this state, where the question of the issuance of the same was first submitted by said trustees to the electors of the county and a majority of all votes cast at such election were in favor of said bond issue, and so found and declared by said board of trustees, are hereby ratified and declared to be valid and legal obligations and of full force and effect. [*Act approved March 1, 1907, § 2.*] (10th Sess. Chap. 61.)

ARTICLE XI.

DUTIES OF COUNTY TREASURER.

941. (§ 1880.) It shall be the duty of the county treasurer of each county:

1. To receive and hold all school moneys as special deposit, and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent of common schools.

2. To notify the county superintendent of common schools of the amount of county school fund in the county treasury subject to apportionment whenever required, and to inform said county superintendent of the amount of school moneys belonging to any other fund subject to apportionment.

3. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of this title, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders.

4. To make annually, during the month of October, in each year, a financial report for the last school year and fiscal year ending with June thirtieth, to the county superintendent of common schools, in such form as may be required by him. [*Act approved March 11, 1895.*]

ARTICLE XII.

DUTIES OF COUNTY CLERK, CLERK OF DISTRICT COURT, AND THE JUSTICES OF THE PEACE.

Section 942. Duty of county clerk.

“ 943. *Duty of clerk of district court.*

“ 944. *Duty of justice of the peace.*

“ 945. *Penalty.*

942. (§ 1890.) *Duty of county clerk.*—It shall be the duty of the county clerks of the several counties of the state to make a report to the county superintendent of common schools within their counties, during the month of September in each year, of the school tax levied and the assessed valuation of the proper counties for that year. [*Act approved March 11, 1895.*]

943. (§ 1891.) *Duty of clerk of district court.*—It shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the county superintendent of the county in which said term shall have been held, whether or not any fines, and if any, what ones, were imposed by said court during the said term. [*Act approved March 11, 1895.*]

Jay v. School District, 24 Mont. 228; 61 Pac. 253.

944. (§ 1892.) *Duty of justice of the peace.*—It shall be the duty of each justice of the peace of each county to report to the county superintendent during the month of September in each year, whether or not they have imposed and collected any fines during the preceding year, and if any, what ones, with the

date at which the same were paid to the county treasurer. [*Act approved March 11, 1895.*]

Jay v. School District, 24 Mont. 228; 61 Pac. 253.

945. (§ 1893.) *Penalty.*—All officers mentioned in §§ 942 (1890), 943 (1891), and 944 (1892) of this title, who shall fail or neglect to perform any of the duties required by this title shall be deemed guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction thereof, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect; and such fine shall be paid into the county treasury for the benefit of the common schools in said county. [*Act approved March 11, 1895.*]

ARTICLE XIII.

TEACHERS' INSTITUTES.

Section 946. Teachers' institutes to be held yearly.

" 947. *Same.*

" 948. *Length of session.*

" 949. *Teachers must attend.*

" 950. *High school teachers exempt.*

" 951. *"Institute fund."*

" 952. *Expenses of institutes.*

946. *Teachers' institutes to be held yearly.*—The county superintendent in every county in which there are five or more school districts must hold one teachers' institute in each year, and every teacher employed in a public school in the county must attend the institute and participate in its proceedings; *provided*, that whenever the State Superintendent and two or more county superintendents deem it advisable, a joint institute consisting of the teachers of two or more counties, may be held at any convenient place within such counties to be selected and agreed upon by their superintendents. [*Act approved March 7, 1907, § 1. (10th Sess. Chap. 148.)*]

947. (§ 1901.) *Same.*—In any county where there are less than five school districts the county superintendent may after conference with the superintendent of public instruction, hold an institute. [*Act approved March 11, 1895.*]

948. *Length of session.*—Each session of the institute must continue not less than three nor more than ten days. [*Act approved March 8th, 1897, § 8. (5th Sess. 132-3.)*]

949. *Teachers must attend.*—When the County Superintendent, after conference with the State Superintendent, has appointed a time for holding the Teachers' Institute in his county, it shall be his duty to give written notice of the time and place of holding such Institute to every Board of School Trustees within

his county, and to all the teachers of the county, at least thirty days before the opening of such Institute. It shall be the duty of all Boards of School Trustees through their clerks, to notify each and all of the teachers within their districts of the time and place of holding the Institute and to direct each and all of their teachers to close their several schools for the purpose of attending the Institute. Each and every teacher engaged in teaching a term of school in any district during the time of the Institute shall close his or her school during such time and shall attend the Institute and take active part in the same without loss of salary for the actual time spent in attending the Institute and for the actual time spent in going to and returning from the same. The County Superintendent shall in all cases keep and preserve a record of the actual time spent by each teacher of his or her county at the Institute and shall furnish both to each teacher and to his Board of School Trustees a certificate of the time spent by said teachers at the Institute. Wilful failure on the part of any teacher to attend the Institute shall be considered sufficient cause for the revocation of such teacher's certificate by the County Superintendent; *provided*, however, that the County Superintendent may, in his discretion, excuse any teacher from attending the Institute who could not attend same without great and excessive inconvenience, cost, expense, and loss of time. Wilful failure on the part of the Board of School Trustees of any school district to close their schools, during the time of the holding of the Institute as herein required, shall be considered sufficient cause for withholding the public moneys to which such district would otherwise be entitled; *provided*, however, that, in the case of Boards of School Trustees as in the case of teachers the great distance of any school district from the place of holding the Institute, excessive loss of time, inconvenience, and cost, shall be considered good grounds on which the County Superintendent, under authority and direction from the State Superintendent, may excuse any Board of School Trustees from closing their school at such times and from observing the above requirements. [Act approved March 2, 1905.] (9th Sess. Chap 60.)

950. *High school teachers exempt.*—All high school teachers are hereby exempt from the requirements of this Act. [Act approved March 2, 1905, § 2.] (9th Sess. Chap. 60.)

951. *"Institute fund."*—For the purpose of defraying the expenses of the institute mentioned in said Section 949 (1904), there shall be an institute fund created as follows:

First: All moneys received from the issuance of teachers' certificates by the county superintendent.

Second. Moneys received from appropriations by boards of county commissioners; and every board of county commissioners in each county in which a teachers' institute may be held is here-

by authorized and directed to appropriate for said "institute fund" as follows:

Counties of the first class not less than \$250 nor more than \$350. Counties of the second class not less than \$250 nor more than \$300. Counties of the third, fourth, fifth and sixth classes not less than \$200 nor more than \$250. Counties of the seventh and eighth classes not less than \$100 nor more than \$200. [*Act approved March 7, 1907, § 2.*] (*10th Sess. Chap. 148.*)

952. (§ 1905.) *Expenses of institutes.*—The county superintendent must keep an accurate account of the actual expenses of the institute, with vouchers for the same, and present the bill to the county commissioners, who shall allow the same; *Provided*, That such amount shall not exceed that specified in the last preceding section of this title. [*Act approved March 11, 1895.*]

ARTICLE XIV.

EXAMINATIONS AND CERTIFICATES.

Section 953. Examination of teachers.

" 954. *County board of educational examiners.*

" 955. *Compensation of board of examiners.*

" 956. *Qualifications of examiners.*

" 957. *Duties of examiners.*

" 958. *Grades of certificates, temporary certificates.*

" 959. *Qualifications of teachers.*

" 960. *Charges for certificates.*

" 961. *Revocation of certificates.*

" 962. *Custody of examination papers.*

" 963. *Status of three year graduate of state normal school.*

" 964. *Status of four year graduate of state normal school.*

953. *Examination of teachers.*—The County Superintendent shall hold public examinations of all persons, over eighteen years of age, offering themselves as candidates for teachers of common schools, at the county seat, on the last Friday in February, April, August and November of each year, and when necessary, such examinations may be continued on the following day, at which time he shall examine them by a series of written or printed questions, according to the rules prescribed by the Superintendent of Public Instructions. If the percentage of correct answers required by the rules, and other evidence disclosed by the examination, including particularly the superintendent's knowledge and information of the candidates successful experience, the applicant is found to be a person of good moral character, to possess a knowledge and understanding, together with aptness to teach and

govern, which shall enable such applicant to teach in the common schools of the State the various branches required by law, said Superintendent shall grant to such applicant a certificate of qualification. [*Act approved March 14th, 1901, § 6.*] (*7th Sess. 123-4.*)

954. *County board of educational examiners.*—That in each county there shall be a board of county examiners composed of the County Superintendent of Schools who shall be ex-officio chairman of the Board, and two competent persons to be appointed by the Board of County Commissioners, who at the time of their appointment shall be residents of the county and shall have been actively engaged in teaching for a period of at least eighteen months. Two members of this Board shall constitute a quorum for the transaction of business. Those first to be appointed shall serve for one and two years respectively from the first day of April 1907 and until their successors are duly appointed and qualified. If vacancies occur in these positions during the terms for which their incumbents were appointed, their successors shall be appointed to serve during their unexpired terms only. Upon the expiration of the regular terms of either of these examiners his successor shall be appointed to serve for two years. [*Act approved February 27, 1907, § 1.*] (*10th Sess. Chap. 47.*)

955. *Compensation of board of examiners.*—The compensation of these examiners shall be their actual traveling expenses from their residences to and from the county seat or other point in the county where the examinations are held, and such further compensation per diem as the Board of County Commissioners may deem just and sufficient for their services, basing such compensation upon the actual quantity of work performed by them and the actual time required to perform it. [*Act approved February 27, 1907, § 2.*] (*10th Sess. Chap. 47.*)

956. *Qualifications of examiners.*—Such examiners at the time of their appointment must be holders of Montana professional county certificates, or State Certificates, of Life Diplomas, or diplomas from the State University, State Normal College, or State College of Agriculture and Mechanic Arts, or holders of diplomas as graduates from some reputable University, College, or Normal School other than those of Montana. These examiners shall qualify for their positions in the same form and manner required for the qualifications of all County Superintendents. [*Act approved February 27, 1907, § 3.*] (*10th Sess. Chap. 47.*)

957. *Duties of examiners.*—The duties of these two examiners shall be to act jointly and equally with the County Superintendent in the matter of conducting the examination of teachers and in the marking and grading of papers submitted by them as the results of the examination. This Board of Examiners shall also

conduct all Eighth Grade Examinations in their respective counties when requested to do so by the State Board of Education to conform with their rules and regulations, and it shall be empowered to grant Eighth Grade diplomas or common school certificates to all examinees successfully passing such examination. [*Act approved February 27, 1907, § 4.*] (10th Sess. Chap. 47.)

958. *Grades of certificates. Temporary certificates.*—County Certificates shall be of four grades. The professional grade for a term of not less than four years, and the first grade certificate for a term of not less than three years, and the professional and first grade certificate shall be good and valid for as long as the holder thereof continues teaching and gives the county superintendent satisfactory evidence of progress and efficiency, the second grade certificate shall be valid for a term of two years, and the third grade certificate shall be valid for a term of one year, according to the ratio of correct answers of the applicant and other evidences of qualification appearing from the examination. No certificate shall be granted unless the applicant shall be found proficient in and qualified to teach the following branches of a common English education: penmanship, orthography, reading, writing, arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene, U. S. History, and theory and practice of teaching. In addition to the above, applicants for a second grade certificate shall pass a satisfactory examination in civics of the United States and Montana, and physical geography; applicants for a first grade certificate shall pass an examination in civics of the United States and Montana, physical geography, American literature and elementary algebra; applicants for a professional grade certificate shall pass an examination in civics of the United States and Montana, physical geography, American literature, elementary algebra, physics and plane geometry. No person shall be employed as a teacher in high school or as the principal teacher of a school of more than two departments, who is not the holder of a professional County certificate or the holder of a life or State diploma, issued by the State Board of Education of the State of Montana, or who is not a graduate of some reputable University, College or Normal School. The percentages required to pass any branch shall, by a standing rule be prescribed by the superintendent of Public Instruction. In addition to these regular grades of certificates, the County Superintendent may grant a temporary certificate to teach until the next regular examination, to any person applying at any other time than at a regular examination, who can show satisfactory reasons for failing to attend such examination, subject to rules and regulations to be prescribed by the Superintendent of Public Instruction. Such temporary certificate shall not be granted more than once to the same person, *Provided*; that where a temporary cer-

tificate has been duly issued to any teacher, and that it is impossible, by reason of sickness or other unavoidable accident, for such teacher to attend the next regular examination, such teacher, upon due and sufficient proof certified to the County Superintendent, who shall certify the facts to the State Superintendent of Public Instruction, who may authorize the County Superintendent to issue a second permit or may require the teacher to take a private examination. The written answers of all candidates, for county certificates after being duly examined by the county superintendent, shall be kept by him during his term of office, and any candidate thinking an injustice has been done to him or her, by paying a fee of two dollars into the institute fund of the County and by notifying both County and State Superintendent of the same, shall have his or her paper re-examined by the Superintendent of Public Instruction. The County Superintendent shall upon receipt of such notice from said complaining candidate, transfer said paper to the Superintendent of Public Instruction, who shall re-examine the same and if the answers warrant it shall instruct the County Superintendent to issue to such complaining candidate a county certificate of proper grade and the county superintendent shall carry out such instructions. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 146-148.)

959. *Qualifications of teachers.*—No certificate to teach in the Public Schools of Montana shall be granted to any person, who is not a citizen of the United States, or who has not declared his intention to become a citizen. Any teacher now holding a certificate, who is not a citizen of the United States will be allowed six months time in which to declare his intention to become a citizen, or else have his certificate revoked. No regular or temporary certificate to teach shall be issued to any person under the age of eighteen years, and no professional or first grade certificate shall be issued to any person who has not taught successfully twelve months; and a third grade certificate shall not be issued more than twice to the same person. Third and second grade certificates shall be valid only in the county where issued. A professional or first grade certificate shall be valid in any county in the state upon indorsement as hereinafter provided, and shall be renewed by the County Superintendent upon the proper fee being paid to the institute fund as provided for in case of examination; *provided*, that no professional or first grade certificate shall be renewed unless the applicant has taught at least ten months during the life of said certificate. Said professional or first grade certificate shall be renewed by the County Superintendent by his indorsement thereon, upon the payment of the same fee as is required by law for examinations; *provided, further*, than whenever application is made by a holder of an unexpired first grade, second grade, or third grade Montana certificate for

examination for any higher grade certificate, and it shall be made to appear to the County superintendent that such applicants have been engaged in teaching in any of the public schools of the State for a period of one year or more, the said applicant shall be entitled to be credited with the percentage on his or her last examination for said first, second or third grade certificate, as the case may be and shall not be required to be examined in any studies except the additional ones prescribed for such certificates, and such other studies that the applicant may not have secured the required percentage upon previous examination; *provided, further*, that to excuse any candidate from taking the examination upon any branch of any grade he or she must have secured upon such branch at his, or her last previous examination at least 80% per cent. No person shall be employed or permitted to teach in any of the public schools of the State who is not a holder of a lawful certificate of qualification to teach. Any contract made in violation of this Section shall be void; *provided*, that the special certificate in penmanship, drawing, modern language and music shall be granted upon request of the majority of the members of any Board of Trustees; such special certificate to be valid for three years and shall entitle the holder to teach only such special branch or branches stated in said certificate; *provided, further*, that if the attendance upon the aforesaid examination of teachers at the County Seat shall work a great hardship to one or more teachers, in the County, the County Superintendent, upon application of the State Superintendent, may provide for such teachers to take the examination at some convenient place, and the County Superintendent may appoint some suitable person to conduct such examination, under the rules and regulations prescribed by the State Superintendent of Public Instruction. [Act approved March 3, 1905.] (9th Sess. Chap. 77.)

960. (§ 1913.) *Charges for certificates.*—Every applicant for a county certificate shall pay one dollar to the county superintendent, which shall be used by him in the support of teachers' institutes in the county. [Act approved March 11, 1895.]

961. (§ 1914.) *Revocation of certificate.*—The county superintendent is authorized and required to revoke and annul at any time a certificate granted by him or his predecessor for any cause which would have authorized or required him to refuse to grant it if known at the time it was granted, and for incompetency, immorality, intemperance, cruelty, crime against the state law, refusal to perform his duty, or general neglect of the business of the school. The revocation of the certificate shall terminate the employment of such teacher in the school in which he or she may at the time be employed, but the teacher must be paid up to

the time of receiving notice of such revocation. [*Act approved March 11, 1895.*]

962. (§ 1915.) *Custody of examination papers.*—The questions prepared by the superintendent of public instruction when received by the county superintendent shall not be opened or the seal thereof broken until the day of examination. And the county superintendent is prohibited from furnishing or giving to any person or persons any information concerning the questions prepared by the state superintendent. [*Act approved March 11, 1895.*]

963. *Status of three year graduates of state normal school.*—All graduates of the State Normal School who have completed and graduated in the professional course of the three years' course of said school and received a diploma, certifying that either of the said courses, has been completed, shall, on the registry of said diploma in the office of the State Superintendent of Public Instruction, be entitled to teach in the public schools of the State of Montana without other or further examination for the term of three years after such graduation and such graduates shall, on furnishing to the State Board of Education satisfactory evidence of having successfully taught in the public schools of the State for a term of two years, be entitled to receive from said Board a life diploma. [*Act approved February 22nd, 1899, § 1.*] (*6th Sess. 51-2.*)

964. *Status of four year graduates state normal school.*—All graduates of the said State Normal School who have completed and graduated in the four years' course of said school and received a diploma, certifying that said course has been completed, shall, on the registry of said diploma in the Office of the State Superintendent of Public Instruction, be entitled to teach in the public schools of the State of Montana, without other or further examination, for a term of three years after such graduation, and on furnishing to the State Board of Education satisfactory evidence or having successfully taught in the public schools of Montana for a period of one year, shall be entitled to receive from such Board a life diploma. [*Act approved February 22nd, 1899, § 2.*] (*6th Sess. 52.*)

ARTICLE XV.

COMPULSORY ATTENDANCE.

Section 965. *Compulsory attendance. Excuses*

“ 966. *Employment of children under fourteen prohibited.*

“ 967. *Employment of children between fourteen and sixteen.*

“ 968. *Juvenile disorderly persons.*

“ 969. *Truant officers, powers and duties.*

Section 970. Duties of principals, teachers and clerks.

“ 971. *Prosecution of truants.*

“ 972. *Commitment to industrial school.*

“ 973. *Pauper children.*

965. *Compulsory attendance. Excuses.*—All parents, guardians and other persons who have care of children, shall instruct them, or cause them to be instructed in reading, spelling, writing, English grammar, geography, physiology and hygiene, and arithmetic. Every parent, guardian or other person having charge of any child between the ages of eight and fourteen years shall send such child to a public, private, or parochial school, for the full time that the school attended is in session, which shall in no case be for less than sixteen weeks during any current year, and said attendance shall begin within the first week of the school term, unless the child is excused from such attendance by the superintendent of the public schools, in city and other districts having such superintendent, or by the clerk of the board of trustees in village and township districts not having such superintendent, or by the principal of the private, or parochial school, upon satisfactory showing, either that the bodily or mental condition of the child does not permit of its attendance at school, or that the child is being instructed at home by a person qualified, in the opinion of the superintendent of schools in city or other districts having such superintendent, or the clerk of the board of trustees in village or township districts not having such superintendent, to teach the branches named in this section, or that there is no school taught the required length of time within 2 1-2 miles of the residence of such child by the nearest traveled road: *provided*, that no child shall be refused admission to any public school on account of race or color. In case such superintendent, principal or clerk refuse to excuse a child from attendance at school, an appeal may be taken from such decision to District Court of the County, upon giving a bond, within ten days after such refusal, to the approval of said court, to pay all costs of the appeal, and the decision of the District Court in the matter shall be final. All children between the ages of fourteen and sixteen years, not engaged in some regular employment, shall attend school for the full term the schools of the district in which they reside are in session during the school year, unless excused for the reason above named. Any parent, guardian, or other person, having care of a child between the ages of eight and fourteen years, who shall, in violation of the provisions of this section, fail to place such child in school at the commencement of the annual school term within the time prescribed in this section, shall upon conviction, be fined not less than five dollars nor more than twenty dollars. [Act approved March 3rd, 1903, § 1.] (8th Sess. Chap. 45.)

966. *Employment of children under fourteen prohibited.*—No child under fourteen years of age shall be employed or be in the employment of any person, company or corporation during the school term and while the public schools are in session, unless such child shall present to such person, company or corporation an age and schooling certificate herein provided for. An age and schooling certificate shall be approved only by the superintendent of schools, or by a person authorized by him, in city or other districts having such superintendent, or by the Clerk of the board of trustees in village and township districts not having such superintendent, upon a satisfactory proof of the age of such minor and that he has successfully completed the studies enumerated in § 965 of this article; or if between the ages of fourteen and sixteen years, a knowledge of his or her ability to read and write legibly the English language. The age and schooling certificate shall be formulated by the Superintendent of Public Instruction and the same furnished, in blank, by the clerk of the board of trustees or the clerk of the district. Every person, company, or corporation employing any child under sixteen years of age, shall exact the age and schooling certificate prescribed in this section, as a condition of employment and shall keep the same on file, and shall upon the request of the truant officer hereinafter provided for, permit him to examine such age and schooling certificate. Any person, company, or corporation, employing any minor contrary to the provisions of this section shall be fined not less than twenty five nor more than fifty dollars for each and every offense. [Act approved March 3rd, 1903, § 2.] (8th Sess. Chap. 45.)

967. *Employment of children between fourteen and sixteen.*—All minors over the age of fourteen and under the age of sixteen years, who cannot read and write the English language shall be required to attend school as provided in § 965, of this article and all the provisions of said section shall apply to said minors; *provided*, that such attendance shall not be required of such minors after they have secured a certificate from the superintendent of schools in districts having superintendents, or the clerk of the board of trustees in districts not having superintendents, that they can read, and write the English language. No person, company or corporation shall employ any such minor during the time schools are in session, or having such minor in their employ shall immediately cease such employment, upon notice from the truant officer who is hereinafter provided. Every person, company, or corporation violating the provisions of this section shall be fined not less than twenty-five nor more than fifty dollars for each and every offense. [Act approved March 3rd, 1903, § 3.] (8th Sess. Chap. 45.)

968. *Juvenile disorderly person.*—Every child between the

ages of eight and fourteen years, and every child between the ages of fourteen and sixteen years unable to read, and write the English language, or not engaged in some regular employment and who is an habitual truant from school, or who absents itself habitually from school, or who, while in attendance at any public, private, or parochial school, is incorrigible, vicious, or immoral in conduct, or who habitually wanders about the streets and public places during school hours having no business or lawful occupation, shall be deemed a juvenile disorderly person and be subject to the provision of this act. [*Act approved March 3rd, 1903, § 4.*] (*8th Sess. Chap. 45.*)

969. *Truant officers. Powers and duties.*—To aid in the enforcement of this act, truant officers shall be appointed and employed as follows: In city districts the board of trustees shall appoint and employ one or more truant officers; in village and township districts the trustees shall appoint, if they deem it advisable, a constable or other person as truant officer. The compensation of the truant officer shall be fixed and paid by the board appointing him. The truant officer shall be vested with police powers, the authority to serve warrants, and have authority to enter workshops, factories, stores and all other places where children may be employed, and do whatever may be necessary, in the way of investigation or otherwise to enforce the provisions of this act; he is also authorized and it shall be his duty to take into custody the person of any youth between eight and fourteen years of age, or between fourteen or sixteen years of age when not regularly employed or when unable to read, and write the English language, who is not attending school, and shall conduct said youth to the school he has been attending, or which he should rightfully attend. The truant officer shall institute proceedings against any officer, parent, guardian, person, or corporation violating any provisions of this act, and perform such other services as the superintendent of schools or the board of trustees may deem necessary to preserve the morals and secure the good conduct of school children, and to enforce this act. The truant officer shall keep a record of his transactions for the inspection and information of the superintendent of the schools and the board of trustees; and he shall make daily reports to the superintendent of schools during the school term in districts having superintendents, and to the clerk of the board of trustees in districts not having superintendents as often as required by him. Suitable blanks for use of the truant officer shall be provided by the clerk of the board of trustees or the clerk of the district. [*Act approved March 3rd, 1903, § 5.*] (*8th Sess. Chap. 45.*)

970. *Duties of principals, teachers and clerks.*—It shall be the duty of all principals, and teachers of all schools, public, private, and parochial, to report to the Clerk of the board of trustees of

the city, village or district in which the schools are situated, the names, ages, and residences of all pupils in attendance at their schools, together with such other facts as said clerk may require, in order to facilitate the carrying out of the provisions of this act, and the clerk shall furnish blanks for such purpose, and such report shall be made during the last week of each month from September to June inclusive of each year. It shall be the further duty of such principals and teachers to report to the truant officer the superintendent of public schools, or the clerk of the board of trustees, as the case may be, all cases of truancy or incorrigibility in their respective schools as soon after these offenses have been committed, as practicable. [*Act approved March 3rd, 1903, § 6.*] (*8th Sess. Chap. 45.*)

971. *Prosecution of truant.*—On the request of the superintendent of schools, or the board of trustees, or when it otherwise comes to his notice, the truant officer shall examine into any case of truancy or non-attendance within his district, and warn said truant or non-attendant and his parent, guardian or other person in charge, in writing, of the final consequence of truancy or non-attendance if persisted in. When any child between the ages of eight and fourteen years, or any child between the ages of fourteen and sixteen years, who cannot read and write the English language or who is not regularly employed, is not attending school, in violation of the provisions of this act, the truant officer shall notify the parent, guardian or other person in charge of such child, of the fact, and require such parent, guardian or other person in charge, to cause the child to attend some recognized school within two days from the date of the notice; and it shall be the duty of the parent, guardian, or other person in charge of the child, so to cause its attendance at some recognized school. Upon failure to do so, the truant officer shall make complaint against the parent, guardian or other person in charge of the child in any court of competent jurisdiction in the city, village, or other district in which the offense occurs, for such failure, and upon conviction, the parent, guardian, or other person in charge, shall be fined not less than five dollars nor more than twenty dollars; or the court may in its discretion, require the person so convicted to give a bond in the penal sum of one hundred dollars, with sureties to the approval of the court, conditioned that he or she will cause the child under his or her charge to attend some recognized school within two days, thereafter and to remain at such school during the term prescribed by law; and upon the failure or refusal of any parent, guardian or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parent, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days. [*Act approved March 3rd, 1903, § 6.*] (*8th Sess. Chap. 45.*)

972. *Committment to Industrial School.*—If the parent, guardian, or other person in charge of any child shall, upon the complaint under the last section for a failure to cause the child to attend a recognized school, prove inability to do so, then he or she shall be discharged, and thereupon the truant officers shall make complaint that the child is a juvenile disorderly person within the meaning of Section 968 (1923) of this Article. If such complaint is made before any Mayor, Justice of the Peace or Police Judge, it shall be certified by such Magistrate to the District Court in and for the County in which the child resides or to a Judge of said District Court. The District Court or the Judge thereof to whom the same is certified shall hear such complaint and if it be determined that the child is a juvenile disorderly person within the meaning of Section 968 (1923) of this Article, the said child shall be committed by the said Court or the Judge thereof to whom the complaint was certified to the Industrial School hereinafter provided for where he shall be subject to all the rules and regulations of said Industrial School; *provided, further*, that if for any cause the parent, guardian, or other person in charge of any juvenile disorderly person as defined in Section 968 (1923) of this Article shall fail to cause such juvenile disorderly person to attend school, then complaint against such juvenile disorderly person shall be made, heard and determined in like manner as provided in case the parent proves inability to cause such juvenile disorderly person to attend school. [Act approved March 3, 1905, § 1.] (9th Sess. Chap. 80.)

973. *Pauper children.*—When any truant officer is satisfied that any child, compelled to attend school by the provisions of this act, is unable to attend school because absolutely required to work, at home or elsewhere, in order to support itself or help support, or care for others legally entitled to its services, who are unable to support or care for themselves, the truant officer shall report the case to the authorities charged with the relief of the poor, and it shall be the duty of said officers to afford such relief as will enable the child to attend school the time each year required under this act. Such child shall not be considered or declared a pauper by reason of the acceptance, of the relief herein provided for. In case the child, or its parents or guardian refuse or neglect to take advantage of the provisions thus made for its instruction, such child may be committed to the industrial school hereinafter provided for. In all cases where relief is necessary it shall be the duty of the board of trustees or the trustees of the district to furnish text books free of charge and said board of trustees may furnish any further relief it may deem necessary, the expenses incident to furnishing said books and relief to be paid from the general fund of the school district. [Act approved March 3rd, 1903, § 6.] (8th Sess. Chap. 45.)

ARTICLE XVI.

INDUSTRIAL SCHOOLS.

- Section 974. *Industrial schools, where established.*
“ 975. *Purchase of sites for buildings.*
“ 976. *Employment and regulations of teachers.*
“ 977. *Parent to provide clothing.*
“ 978. *Rules and regulations of school.*
“ 979. *Paroled children.*
“ 980. *Recommitment of paroled children.*
“ 981. *Incorrigibles.*
“ 982. *Industrial schools in small districts.*
“ 983. *Receiving pupils from other districts.*
“ 984. *Penalties and fines for neglect of official duty.*
“ 985. *Penalties for repeated violations of act.*
“ 986. *Duties of trustees to provide sufficient accommodations.*
“ 987. *Costs of prosecution.*
“ 988. *Repeal of conflicting provisions.*

974. *Industrial schools, where established.*—In school districts having a population of 25,000 or more, there shall be established within two years from the passage of this act, an industrial school for the purpose of affording a place of confinement, discipline, instruction, and maintenance of children of compulsory school age who may be committed thereto according to the provisions prescribed in section 972 (1925 b). [Act approved March 3rd, 1903.] (8th Sess. Chap. 45.)

975. *Purchase of site and building.*—For the purpose of establishing such school or schools, sites may be purchased and buildings constructed or premises rented in the same manner as is provided for in the case of public schools in such districts; but no school shall be located at or near any penal institution. And it shall be the duty of the Board of Trustees to furnish such schools with such furniture, fixtures, industrial and other apparatus, and provisions as may be necessary for the maintenance and operation thereof. [Act approved March 3rd, 1903.] (8th Sess. Chap. 45.)

976. *Employment and regulation of teachers.*—The Board of trustees may also employ a principal and other necessary officers, agents, and teachers; and shall prescribe the methods of discipline and the course of instruction; and shall exercise the same powers and perform the same duties as is prescribed by law for the management of other schools.

No religious instruction shall be given in said school, except such as is allowed by law to be given in public schools; but the board of trustees may make suitable regulation so that the inmates may receive religious training in accordance with the

belief of the parents of such children, by arranging for attendance at public services elsewhere. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

977. *Parents to provide clothing.*—It shall be the duty of the parent or guardian of any child committed to this school to provide suitable clothing upon his or her entry into such school, and from time to time thereafter as it may be needed, upon notice in writing from the superintendent or other proper officer of the school. In case any parent or guardian shall refuse or neglect to furnish such clothing, the same may be provided by the board of trustees, and such board may have an action against such parent or guardian of said child to recover cost of such clothing, with 10 per cent. additional thereto. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

978. *Rules and regulations of school.*—The board of trustees of such district shall have power to establish rules and regulations under which children committed to such industrial school may be allowed to return home upon parole, but to remain while upon parole in the legal custody and under control of the officers and agents of such school and subject at any time to be taken back within the enclosure of such school by the superintendent or any authorized officer of said school except as hereinafter provided; and full power to enforce such rules and regulations to retake any such child so upon parole is hereby conferred upon said board of trustees. No child shall be released upon parole in less than four weeks from the time of his or her committment, nor thereafter until the superintendent of such industrial school shall have become satisfied from the conduct of such child, that, if paroled, he or she will attend regularly the public or private school to which he or she may be sent by his or her parents or guardians, and shall so certify to the board of trustees. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

979. *Paroled children.*—It shall be the duty of the principal or other person having charge of the school to which children so released on parole may be sent, to report at least once each month to the superintendent of the industrial school, stating whether or not such child attends school regularly, and obeys the rules and regulations of said school; and if such child so released upon parole shall be regular in his or her attendance at school, and his or her conduct as a pupil shall be satisfactory for a period of one year from date on which he or she was released upon parole, he or she shall then be finally discharged from the industrial or truant school, and shall not be recommitted thereto, except as hereinbefore provided. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

980. *Recommitment of paroled children.*—In case any child released from school upon parole, as hereinbefore provided, shall

violate the conditions of his or her parole at any time within one year thereafter, he or she shall upon the order of the board of trustees, as hereinbefore provided, be taken back to such industrial school, and shall not be again released upon parole within the period of three months from the date of such re-entering; and if he or she shall violate the conditions of a second parole, he or she shall be recommitted to such industrial school, and shall not be released therefrom on parole, until he or she shall remain in such school at least one year. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

981. *Incorrigibles.*—In any case where a child is incorrigible and his or her influence in such school be detrimental to the interests of the other pupils, the board of trustees may authorize the superintendent or any other officer of the school to represent these facts to the District Court by petition; and the court shall have power to commit said child to the state reform school. [*Act approved March 2nd, 1903.*] (8th Sess. Chap. 45.)

982. *Industrial schools in small districts.*—The board of trustees in districts having a population less than 25,000 may establish, maintain and operate an industrial school for the purpose hereinbefore specified, and in case of the establishment of such school, the board of trustees shall have like power in their respective districts as hereinbefore expressed; *provided*, that no board of trustees under this section shall put this law into effect until submitted to a vote at some general or special election. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

983. *Receiving pupils from other districts.*—Boards of trustees in districts where there is established and in operation an industrial school, may if the accommodation permits receive pupils from other districts who have been committed thereto, upon the payment from the district in which the child resides, at such a rate of tuition as the board of trustees may fix. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

984. *Penalties and fine for neglect of official duty.*—Any officer, principal, or other person mentioned in this act, neglecting to perform any duty imposed upon him by this act, shall be fined not less than twenty-five or more than fifty dollars, for each offense. Any officer or agent of any corporation violating any provisions of this act, and who participates or acquiesces in or is cognizant of such violation, shall be fined not less than twenty-five dollars nor more than fifty dollars. Any person who violates any provision of this act for which a penalty is not elsewhere in this act provided for, shall be fined not more than fifty dollars. Mayors, justices of the peace, police judges, and district courts shall have jurisdiction to try the offenses described in this act. When complaint is made, information filed or indictment found against any corporation for violating this

act, summons shall be served, appearance made, or plea entered, as provided by the laws of Montana, except that in complaint before magistrates, services shall be made by the constable. In all other cases process shall be served, and proceedings had, as in cases of misdemeanor. All fines collected under the provisions of this act shall be paid into the funds of the school district in which the offense was committed. Board of trustees are authorized to employ legal counsel to prosecute any case arising under the provisions of the act when it shall deem the same necessary, and the services of such counsel shall be paid from the general fund of the district. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

985. *Penalties for repeated violation of act.*—Every person who, after being once convicted for violating any of the provisions of this act, shall be convicted of again violating any of the provisions of this act, may, in addition to the punishment by way of a fine elsewhere provided for, be imprisoned not less than ten days nor more than thirty days. On complaint, before mayor, justice of the peace, or police judge of a second violation of this act involving punishment by imprisonment, if a trial by jury be not waived, a jury shall be chosen and the case tried, after the manner provided in the laws of Montana. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

986. *Duty of trustees to provide sufficient accommodations.*—It is hereby made the duty of every board of trustees in this state to provide sufficient accommodations in the public schools for all children in their district compelled to attend the public schools under the provisions of this act. Authority to levy tax and raise the money necessary for such purpose, is hereby given the proper officers charged with such duty under the law. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

987. *Costs of prosecutions.*—No officer or person instituting proceedings under this act shall be required to advance money or give security for costs; and if a defendant is acquitted or discharged, or if convicted, and committed to jail in default of payment of fine and costs, the justice, mayor, police judge or district court, before whom such case was brought shall certify such costs to the county auditor, who shall examine, and if necessary, correct the account, and issue his warrant to the county treasurer in favor of the respective persons to whom such costs are due for the amount due each. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

988. *Repeal of conflicting provisions.*—All sections in the school laws of the state of Montana in violation of the provisions of this act are hereby repealed. [*Act approved March 3rd, 1903.*] (8th Sess. Chap. 45.)

ARTICLE XVII.

CITY SUPERINTENDENT OF SCHOOLS.

- Section 989. *City superintendent of schools.*
 “ 990. *Qualifications.*
 “ 991. *Duties.*
 “ 992. *Certain employment prohibited.*

989. (§ 1930.) *City superintendent of schools.*—In every district having a population of five thousand and upwards the board of trustees of such district may appoint a superintendent of schools, who shall be designated city superintendent of schools of the district and who shall hold his position at the pleasure of the board. He shall be paid a salary from the general school fund to be fixed by the board of trustees. [Act approved March 11, 1895.]

990. (§ 1931.) *Qualifications.*—The person appointed to such position shall be a holder of a state certificate of the highest grade, issued in some state, or a graduate of some reputable university, college or normal school, and shall have taught in public schools at least five years. [Act approved March 11, 1895.]

991. (§ 1932.) *Duties.*—The superintendent shall perform such duties as the board of trustees shall prescribe. [Act approved March 11, 1895.]

992. (§ 1933.) *Certain employment prohibited.*—No city superintendent shall engage in any work that will conflict with his duties as superintendent. [Act approved March 11, 1895.]

ARTICLE XVIII.

SCHOOL FUNDS.

- Section 993. *Permanent school fund.*
 “ 994. *Common school levy.*
 “ 995. *Special school tax.*
 “ 996. *Apportionment.*
 “ 997. *Purposes for which money may be used.*
 “ 998. *Transfer of road funds.*
 “ 999. *Proceeds of town lots.*
 “ 1000. *Building and furnishing fund.*
 “ 1001. *Warrants.*
 “ 1002. *Transfer of funds. Election.*

993. *Permanent school fund.*—The principal of the State school fund shall remain irreducible and permanent. That said fund shall be derived from the following sources, to-wit: appropriations and donations by the State to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by

escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, materials or other property from school lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state which shall be sold by the United States subsequent to the admission of the state into the Union as approved by Section 15 of the Enabling Act; the principal of all funds arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools and such other funds as may be provided by legislative enactment. [*Act approved March 8, 1897.*] (*5th Sess. Chap. 133.*)

994. *Common school levy.*—In addition to the provisions for the support of common schools, hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax of four mills on the dollar of the assessed value of all taxable property, real and personal, within the county which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the further support of the common schools, there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from all fines or violations of law, unless otherwise specified by law. Such money shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by taxing each county and dividing in the same manner. [*Act approved February 27, 1907, § 1.*] (*10th Sess. Chap. 51.*)

995. *Special school tax.*—On or before the day designated by law for the commissioners of each county to levy the requisite taxes for the then ensuing year, the school board in each school district shall certify to the county commissioners the number of mills per dollar which it is necessary to levy on the taxable property of the district, not to exceed ten mills, to raise a special fund to maintain the schools of said districts, to furnish additional school facilities therefor, and to furnish such appliances and apparatus as may be needed, and, in districts of the first and second class, the trustees thereof must make such special levy, or so much thereof as may be necessary to maintain a school term of at least nine months in each year, and the county commissioners shall cause the same to be levied at the same time that other taxes are levied, and the amount of such special tax shall be

assessed to each taxpayer of such district, and shall be placed in a separate column of the tax book, which shall be headed "Special School Tax."

There shall also be a column in said tax book, which shall be designated the number of the school district in which the property is listed. This tax, when collected, shall be placed to the credit of the proper district, and shall be subject to the order of the district board. [*Act approved February 27, 1907, § 2. (10th Sess. Chap. 51.)*]

996. (§ 1942.) *Apportionment.*—All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school census children between six and twenty-one years of age, as shown by the returns of the district clerk for the next preceding school census; *Provided*, That Indian children, who are not living under the guardianship of white persons, shall not be included in the apportionment list, unless the parents thereof are citizens of the United States or have taken land under the allotment and severalty act of congress, and have severed their tribal relations. [*Act approved March 11, 1895.*]

State v. Cave, 20 Mont. 473; 52 Pac. 202.

997. (§ 1943.) *Purposes for which money may be used.*—County school moneys may be used by the county superintendent and trustees for the various purposes as authorized and provided in this title, and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, after providing for the expense of not less than eight months' school, on a vote of the qualified electors of said district, may be used for the purpose of building and improvement. If any school money shall be paid by authority of the board of trustees for any purpose not authorized by this title, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or, if he shall refuse to bring the same, a suit may be brought by any tax-paying elector in the district. [*Act approved March 11, 1895.*]

Butte v. School District, 29 Mont. 336; 74 Pac. 869. School district property cannot be specially assessed to pay the cost of sprinkling the streets on which

it abuts. The "improvement" mentioned in this section must enhance materially the value of the school property for the purpose for which it is held.

998. (§ 1944.) *Transfer of road funds.*—It shall be the duty of the county treasurer in each county in this state upon an order of the board of county commissioners, to transfer any and all sums of money raised by county road tax and apportioned to certain road districts, that shall have remained one year to the credit of any road district unused or unapportioned, to the credit of the particular school district or districts whose boundaries are coterminous, or nearly so, with those of the road district to

whose credit said moneys were originally apportioned. A certificate to the road supervisor that such moneys are not needed for immediate use in building or repairing roads in his district, accompanied by the petition of ten residents of such district that such transfer be made, shall be made sufficient warrant for the county treasurer to make such transfer when approved by the board of county commissioners, and the official maps of the several road and school districts of the county shall determine the districts to which the transfers are to be made. Moneys so received to the credit of any particular school district may be applied by the trustees thereof to the payment of any outstanding district indebtedness, or like other funds, to the ordinary expenses of the district. [*Act approved March 11, 1895.*]

999. (§ 1945.) *Proceeds of town lots.*—All moneys arising from the sale of town lots under and by virtue of the several acts of the legislative assembly of the state of Montana relating to town sites, that are now or that hereafter may come into the hands of any clerk of the district court, or the corporate authorities of any city or town of this state, shall be paid into the county treasury of the county for the use and benefit of the common schools of the school district in which such city or town is situated, to be used as provided for in this title. [*Act approved March 11, 1895.*]

1000. (§ 1946.) *Building and furnishing fund.*—The county treasurers of the several counties of this state shall transfer all moneys so paid into said treasury as provided for in § 999 (1945) of this title, or that may now be in such treasury, derived from said source, to the school fund of the school district in which town is situated, which shall be paid out on the order of the school trustees of such district, as provided for in § 1001 (1947) of this title; and which said moneys shall be by said treasurer set apart as a special fund for the purpose of building and furnishing school houses, and shall be used for such purpose alone, unless otherwise ordered, as provided for in this title. [*Act approved March 11, 1895.*]

1001. (§ 1947.) *Warrants.*—The school trustees of any school district are hereby authorized to draw warrants on said fund named in §§ 999 (1945) and 1000 (1946) of this title, for the purpose of building and furnishing a school house in such place, in the town or city from the sale of lots out of which such fund arose, as they may designate, which said warrants or orders shall specify the fund on which the same are drawn and for what purpose drawn. [*Act approved March 11, 1895.*]

1002. (§ 1948.) *Transfer of funds. Election.*—Said fund may be used for general school purposes, if a majority of the qualified electors of such districts shall so elect, and upon the written request of any five of the qualified electors of such dis-

trict, presented to the trustees for such purpose in the manner provided in § 1243* and the trustees shall prepare the form of the ballot used in such election, which election shall be conducted as other elections provided for in the several school districts under the general school laws of this state, and when any warrant is so drawn on said fund for other purpose than the building and furnishing of a school house, said warrant shall specify that it was pursuant to an election held for such purpose. [Act approved March 11, 1895.]

* No such number in original bill.

ARTICLE XIX.

BONDS.

<i>Section</i>	<i>1003.</i>	<i>How issued. Election. Limit.</i>
"	<i>1004.</i>	<i>Bonds for building and equipping school buildings.</i>
"	<i>1005.</i>	<i>Manner of holding elections. Ballots. Voting.</i>
"	<i>1006.</i>	<i>Notice of sale of bonds.</i>
"	<i>1007.</i>	<i>School district liable on bonds.</i>
"	<i>1008.</i>	<i>Tax. Interest. Sinking funds.</i>
"	<i>1009.</i>	<i>Redemption of bonds. Duties of county commissioners.</i>
"	<i>1010.</i>	<i>Redemption notice to bond holders.</i>
"	<i>1011.</i>	<i>Duty of county treasurer.</i>
"	<i>1012.</i>	<i>Printing of bonds.</i>
"	<i>1013.</i>	<i>Penalty for refusal to pay bonds.</i>
"	<i>1014.</i>	<i>Repayment of moneys borrowed for maintenance of schools.</i>
"	<i>1015.</i>	<i>Special levy to repay moneys borrowed.</i>
"	<i>1016.</i>	<i>Disposition of funds collected.</i>
"	<i>1017.</i>	<i>Trustees may issue bonds.</i>
"	<i>1018.</i>	<i>General laws applicable.</i>

1003. (§ 1960.) *How issued. Election. Limit.*—The board of school trustees of any school within this state shall, whenever a majority of the school trustees so decide, submit to the electors of the district the question whether the board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent. of the taxable property in said district, and bearing a certain rate of interest not exceeding six per cent. per annum, and payable and redeemable at a certain time, for the purpose of building and furnishing one or more school houses in said district, and purchasing land necessary for the same. Should the trustees of any school district in which bonds have heretofore been issued to any amount, desire to submit to the electors of the district the question as to whether additional bonds shall be issued they may do so, but no such bonds shall be issued

unless a majority of all the votes cast at any such election shall be cast in favor of such issue of additional bonds; and in no case shall the whole issue of bonds exceed the amount of three per cent. of the taxable property within said school district. [*Act approved March 11, 1895.*]

1004. *Bonds for building and equipping school buildings.*—The Board of School Trustees of any school district within Montana, shall, whenever a majority of the School Trustees so decide, submit to the electors of the district the question whether the Board shall be authorized to issue coupon bonds to a certain amount, not to exceed three per cent. of the taxable property in said district; *provided*, that nothing herein contained shall authorize the issuance of bonds to an amount exceeding Five Hundred Thousand Dollars in any one school district, and bearing a certain rate of interest not exceeding six per centum per annum and payable and redeemable at a certain time, for the purpose of building and furnishing one or more school houses in said district, and purchasing land necessary for the same. Should the trustees of any school district in which bonds have been heretofore issued to any amount, desire to submit to the electors of the district the question as to whether additional bonds shall be issued they may do so, but no such bonds shall be issued unless a majority of all the votes cast at any such election shall be cast in favor of such issue of additional bonds; and in no case shall the whole issue of bonds exceed in amount three per centum of the taxable property within such school district. This Act shall not apply to an Act entitled “An Act to authorize the School Trustees of the School District Number One, of Deer Lodge County, to issue additional bonds for certain purposes,” approved February 13th, 1885. [*Act approved February 21, 1905, § 1.*] (9th Sess. Chap. 28)

1005. *Manner of holding election. Ballots. Voting.*—Such election shall be held in the manner prescribed for the election of school trustees except that no registration will be required. The ballots shall be in form as follows: “Shall bonds be issued and sold to the amount ofdollars and bearing not to exceed.....per cent. interest and for a period not to exceedyears, for the purpose of purchasing a school lot and building a school house thereon and furnishing the same?

Bonds, Yes?

Bonds, No?

The elector shall prepare his ballot by crossing out thereon parts of the ballot in such a manner that the remaining part shall express his vote upon the question submitted. If a majority of the votes cast at such election are Bonds “Yes,” the Board of School Trustees shall issue such bonds in such form as the board may direct, and they shall bear the signature of the Chairman of

the Board of Trustees, and shall be signed by the Clerk of the said School Districts; and the coupons attached to the bonds shall be signed by the said Chairman and Clerk, *provided*, a lithographic or engraved facsimile of the signatures of the Chairman and Clerk may be affixed to coupons only, when so recited in the bonds, and the corporate seal of the School District shall be attached to each of the bonds; and each bond so issued shall be registered by the County Treasurer in a book provided for that purpose, which shall show the number and amount of each bond, and the person to whom the same is issued or sold; and the said bonds shall be sold by the Trustees as hereinafter provided. [*Act approved March 14, 1901, § 2.*] (*7th Sess. 125-6.*)

Hauswirth v. Mueller, 25 Mont. 159; 64 Pac. 325.

1006. (§ 1963.) *Notice of sale of bonds.*—The school trustees shall give notice by advertisement in some newspaper published in this state, for a period of not less than four weeks to the effect that the said school trustees will sell said bonds (briefly describing the same) and stating the time when, and place where, such sale will take place: *Provided*, That the said bonds shall not be sold for less than their par value, and that the said trustees are authorized to reject any bids, and to sell said bonds at private sale, if they deem it for the best interest of the district; and all moneys arising from the sale of said bonds shall be paid forthwith into the treasury of the county in which such district may be located to the credit of said district, and the same shall be immediately available for the purpose of building or providing the school houses authorized by this title; *Provided*, That no such bonds shall be delivered by the board of trustees unless the moneys therefor have been paid into the county treasury. [*Act approved March 11, 1895.*]

1007. (§ 1964.) *School district liable on bonds.*—The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of the bonds which shall be issued under the provisions of this title. And for the purpose of enforcing the provisions of this title, each school district shall be a body corporate, which may sue and be sued by or in the name of the board of school trustees of such district. [*Act approved March 11, 1895.*]

1008. (§ 1965.) *Tax. Interest. Sinking fund.*—The school trustees of each district shall ascertain and levy annually, the tax necessary to pay the interest when it becomes due and a sinking fund to redeem the bonds at their maturity; and said tax shall become a lien upon the property in said school district, and be collected in the same manner as other taxes for school purposes. [*Act approved March 11, 1895.*]

1009. (§ 1966.) *Same. Redemption of bonds.*—The county commissioners, at the time of making the levy of taxes for county

purposes, must levy a tax for that year upon the taxable property in such district, for the interest and redemption of said bonds, and such tax must not be less than sufficient to pay the interest of said bonds for that year, and such portion of the principal as is to become due during such year, and in any event must be high enough to raise, annually, for the first half of the term said bonds have to run, a sufficient sum to pay the interest thereon; and during the balance of the term, high enough to pay such annual interest, and to pay, annually, a portion of the principal of said bonds equal to a sum produced by taking the whole amount of said bonds outstanding and divide it by the number of years said bonds have to run; and all money so levied, when collected, must be paid into the county treasury to the credit of such district, kept in a separate fund and be used for the payment of principal and interest on said bonds, and for no other purpose.

1. *Provided*, That the board may with the surplus of such sinking fund, when the same shall be one thousand dollars or more, purchase any of the outstanding bonds issued by the board. Such purchase shall be made at the lowest price such bonds can be purchased at, but at no more than par value of such bonds; and whenever there shall be such a surplus of sinking fund amounting to the sum of one thousand dollars, the board shall purchase therewith like bonds, on the same terms and conditions as hereinbefore specified.

2. If for any reason such bonds cannot be purchased as hereinbefore specified, such sinking fund shall be invested by the treasurer under the direction of the board of trustees, at such times as the board shall direct, in the interest-bearing bonds of the United States or of the state of Montana, which shall be purchased at the lowest market price. Interest accruing upon such bonds shall be invested in the same manner and for the same purpose as sinking fund. Such bonds shall be held by the treasurer until the principal of any bonds issued by the board of trustees shall become due, and shall be sold at the highest market price, and the proceeds applied to the payment of bonds; *Provided further*, That if at any time the board shall deem it best, it shall be lawful to sell such bonds for the purpose of purchasing the bonds issued by such board; but all such sales shall be at the highest market price, and the bonds of the board purchased with the proceeds of such sale shall be purchased at the lowest price they can be obtained for, and not above the par value of such bonds; *Provided further*, That the bonds first maturing shall be purchased, if they can be purchased, on terms as favorable to the board as others offered for sale to the said board. All bonds of the said board purchased under the authority hereby given, or paid by the board, shall be forthwith canceled as provided in the next succeeding section. [Act approved March 18, 1895.]

1010. (§ 1967.) *Redemption. Notice to bond holder.*—When the sum in said sinking fund shall equal or exceed the amount of any bond then due, the county treasurer shall give notice to each bond holder, if known to him and shall post in his office a notice that he will, within thirty days from the date of such notice, redeem the bonds then payable, giving the numbers thereof, and preference shall be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bonds shall fail or neglect to present the same for payment, interest thereon shall cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds shall be so purchased or redeemed, the county treasurer shall cancel all bonds so purchased and redeemed by writing across the face of such bond or bonds, in red ink, the word “Redeemed” and the date of such redemption; *Provided, That*, whenever in the judgment of the board of school trustees and prior to the redemption of said bonds said board shall deem it advisable and for the best interests of the school district to invest said sinking fund or any part thereof, the board may by an order entered upon their minutes direct and require the county treasurer to invest said sinking fund or any part thereof in state or county bonds or warrants until such redeemable period. [Act approved March 11, 1895.]

1011. (§ 1968.) *Duty of county treasurer.*—The county treasurer shall pay out of any moneys belonging to a school district the interest upon any bonds issued under this title by such district when the same shall become due, upon the presentation at his office of the proper coupon which shall show the amount due, and the number of the bond to which it belonged; and all coupons so paid shall be reported to the school trustees at their first meeting thereafter. [Act approved March 11, 1895.]

1012. (1969.) *Printing of bonds.*—The school trustees of any district shall cause to be printed or lithographed, at the lowest rates, suitable bonds, with the coupons attached, when the same shall become necessary, and pay therefor out of any moneys in the county treasury to the credit of said school district. [Act approved March 11, 1895.]

1013. (§ 1970.) *Penalty.*—If any of the school trustees of any district shall fail or refuse to pay into the proper county treasury the money arising from the sale of any bonds provided for by this title, they shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years. [Act approved March 11, 1895.]

1014. *Repayment of moneys borrowed for maintenance of schools.*—That whenever, before the passage of this act, the taxes levied and collected in any school district upon the taxable prop-

erty of said district, for the necessary maintenance of the schools therein, have been insufficient for the necessary maintenance of said schools, and for that reason the trustees of said school district have been compelled to borrow money for the necessary maintenance of said schools, in order to prevent the closing of the same for a portion of the regular school year of said district, and have borrowed money for the necessary maintenance of said schools, and such moneys so borrowed cannot be repaid out of the total amount of taxes that may be raised by maximum levy for school purposes, in such district, without using the funds of the district needed to pay the necessary current expenses for the maintenance of the schools therein, and thereby necessitating the closing of such schools for the whole or a portion of the regular current school year of such district for one or more years, then the said trustees shall be, and are hereby, empowered to raise money to repay, and to repay such loans, with interest thereon from the date thereof until paid at the rate of six per cent per annum, by levying a tax therefor upon all the taxable property in said district in the manner provided in the following sections. [*Act approved January 27, 1905, § 1.*] (9th Sess. Chap. 2.)

1015. *Special levy to repay moneys borrowed.*—That if the trustee of any school district, under the circumstances mentioned in Section I, of this Act shall determine to repay the moneys borrowed and used for the purpose mentioned in said Section I, they shall ascertain the amount to be levied by finding the amount of the principal of such loans and interest at six per cent per annum from the date thereof to December 15th of the year in which such levy shall be made, that being the time when the tax will properly be collected, and shall, on or before the day when the county commissioners are required by law to make the annual tax levy, make and file with the County Clerk of the county in which such school district shall be situated, their certificate, which shall be signed by a majority of such trustees, setting forth therein the amount to be raised as aforesaid, and requesting the County Commissioners to levy the amount named in said certificate as a special tax upon all the taxable property in said school district. The valuation of the property in said district as the same appears upon the assessment roll of said county for the year for which the levy shall be made, shall be the basis for the assessment of such tax. It shall be the duty of the County Commissioners at the time the annual tax levy is made, to levy the sum named in said certificate as a special tax upon all of the taxable property in said district, and the duty of the County Clerk to spread said tax upon the said assessment roll against all of said property in the same manner as other taxes are spread upon said roll, and said tax being so assessed shall become a lien upon said property and be collected in the same manner as other taxes for school

purposes are collected. [*Act approved February 19th, 1901, § 2.*] (*7th Sess. 3-4.*)

1016. *Disposition of funds collected.*—That when the tax mentioned in the preceding sections, has been collected, or any part thereof, the County Treasurer shall place the same to the credit of said school district in a fund separate from all other funds of said district, and the moneys in such fund shall be forthwith paid out by the trustees to the persons and corporations to whom the same are payable, and until the debt for the payment of which such moneys were raised have been paid, no part of such funds shall be used for any other purpose. If from failure to collect the entire amount of such tax, or from any other cause, there shall not be moneys sufficient in said fund to pay the amount of principal and interest of the sum borrowed, the trustees shall pay the amount of such deficiency from the general fund to the credit of said district, and if, after paying all of the debts payable out of such special fund, a balance shall remain therein, such balance shall be transferred to the general fund of said district. [*Act approved February 19th, 1901, § 3.*] (*7th Sess. 4.*)

1017. *Trustees may issue bonds.*—If the trustees of any school district mentioned in this Act shall determine that it would not be for the best interest of said district to raise in any one year the moneys mentioned in Section I of this Act by levying and collecting a tax therefor as in the preceding sections provided, they shall nevertheless be authorized and empowered to raise such moneys by issuing and selling the bonds of said district in an amount sufficient to repay, and to repay, such moneys with interest thereon at six per cent. per annum. If the said trustees shall determine to issue the bonds of said district for the purpose aforesaid, they shall ascertain the amount of said bonds by finding the amount of principal and interest of the loans to be repaid at six per cent. per annum from the date thereof until the time when said bonds will probably be sold as hereinafter provided. They shall then issue the bonds of such district to the amount so ascertained which bonds shall draw interest at a rate not to exceed six per cent. per annum, payable either annually or semi-annually as the trustees shall determine, and each of said bonds shall be for the sum of One Hundred Dollars or multiples thereof and shall run for such length of time as the said trustees shall determine, not exceeding a period of ten years from the date thereof; said bonds shall be in such form as the board of trustees may direct, and shall bear the signature of the chairman of the board of trustees, and shall be signed by the clerk as clerk of said school district, and the coupons attached to said bonds shall be signed by said chairman and said clerk; *provided* that lithographic or engraved fac-similes of the signatures of the chairman and clerk may be affixed to coupons only when so recited in the bond, and

each bond so issued shall be registered by the county treasurer in a book provided for that purpose which shall show the number and amount of each bond and the person to whom the same is issued or sold, and said bonds shall be sold and the proceeds thereof deposited with the county treasurer in the manner provided by the provisions of Section 1016 (1963) of the Political Code of this State, and paid out by the trustees to the persons and corporations to whom the loans for the payment of which such bonds were issued are payable. [*Act approved February 19th, 1901, § 4.*] (7th Sess. 4-5.)

1018. *General laws applicable.*—All of the powers conferred and duties enjoined upon school trustees and county commissioners by Sections 1008 (1965), 1009 (1966), 1010 (1967), 1011 (1968) and 1012 (1969) of the Political Code of this State and any amendments thereof for raising money to pay the interest on, and to provide, and for the care and management of, a sinking fund for the redemption and payment of bonds issued by school districts under the provisions of existing laws are hereby conferred and enjoined upon school trustees and county commissioners respectively with respect to all bonds issued under the provisions of this act as fully and completely to all intents and purposes as though the above named sections were incorporated in and made a part of this Act. [*Act approved February 19th, 1901, § 5.*] (7th Sess. 5.)

ARTICLE XX.

VACANCIES.

Section 1019. Vacancy in school board.

“ 1020. *Vacancy. Clerk.*

“ 1021. *Trustee. How removed.*

1019. (§ 1980.) *Vacancy in school board.*—When any vacancy occurs in the office of trustee of any school district by death, resignation, failure to elect at the proper time, removal from the district, or other cause the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the school district, and the county superintendent shall immediately appoint in writing some competent person, who shall qualify and serve until the next annual school election. The county superintendent shall at the same time notify the clerk of the school district of every such appointment; *Provided*, That absence from the school district for sixty consecutive days shall constitute a vacancy in the office of trustee. [*Act approved March 11, 1895.*]

1020. (§ 1981.) *Vacancy. Clerk.*—Should the office of the clerk of the school district become vacant, the board of school trustees shall immediately fill such vacancy by appointment, and

the chairman of the board shall immediately notify the county superintendent of such appointment. [*Act approved March 11, 1895.*]

1021. (§ 1982.) *Trustee. How removed.*—Any school trustee may be removed from office by a court of competent jurisdiction, as provided by law for removal of elective civil officers; *Provided*, however, that upon charges being preferred and good cause shown the board of county commissioners may suspend a trustee until such time as such charges can be heard in the court having jurisdiction thereof. [*Act approved March 11, 1895.*]

ARTICLE XXI.

TREE PLANTING.

Section 1022. Arbor day.

“ 1023. *Arbor day exercises.*

“ 1024. *Same. Superintendent of public instruction.*

1022. The third Tuesday of April shall be known throughout the state as Arbor Day. [*Act approved February 13, 1907, § 1.*] (*10th Sess. Chap. 11.*)

1023. (§ 1991.) *Arbor day exercises.*—In order that the children in our public schools shall assist in the work of adorning the school grounds with trees, and to stimulate the minds of the children towards the benefit of preservation and perpetuation of our forests and the growing of timber, it shall be the duty of the authorities in every public school district in this state to assemble the children in their charge on the above day in the school building or elsewhere, as they may deem proper, and to provide for and conduct under the general supervision of the city superintendent, county superintendent, teachers and trustees or other school authorities having the general charge and oversight of the public schools in each city or district, to have and hold such exercises as shall tend to encourage the planting, preservation and protection of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results. [*Act approved March 11, 1895.*]

1024. (§ 1992.) *Same. Superintendent of public instruction.*—The superintendent of public instruction shall have power to prescribe from year to year a course of exercises and instructions in the subject hereinbefore mentioned, which shall be adopted and observed by the said public school authorities on Arbor day. [*Act approved March 11, 1895.*]

ARTICLE XXII.

PIONEER DAY.

Section 1025. Designation of Pioneer Day.

“ 1026. *Exercises in public schools.*

Section 1027. Pioneer medals.

" 1028. *Copies of essay to be deposited with Society of Pioneers.*

" 1029. *Course of exercises.*

1025. *Designation of Pioneer Day.*—That the last Friday in May of each year shall hereafter be designated and known as Pioneer Day in the State of Montana. [*Act approved March 5th 1903, § 1.*] (8th Sess. Chap. 88.)

1026. *Exercises in public schools.*—That on said Pioneer Day in the Public Schools the afternoon thereof shall be devoted to the study and discussion of Pioneers and Pioneer history of the region of country now comprising the State of Montana. [*Act approved March 5th, 1903, § 2.*] (8th Sess. Chap. 88.)

1027. *Pioneer medal.*—That the State Board of Education is hereby authorized to annually award its Pioneer Medal to the Student of the Public Schools or State Institutions who shall on said day deliver the best essay on such subject of pioneer history, having regard to historical research and literary merit. [*Act approved March 5th, 1903, § 3.*] (8th Sess. Chap. 88.)

1028. *Copies of Essay to be deposited with Society of Pioneers.*—That copies of such essays shall be lodged by the said State Board of Education with the Society of Montana Pioneers. [*Act approved March 5th, 1903, § 4.*] (8th Sess. Chap. 88.)

1029. *Course of exercises.*—The Superintendent of Public Instruction shall have power to prescribe from year to year a suitable course of exercises to be observed in the Public Schools of the State on Pioneer Day. [*Act approved March 5th, 1903, § 5.*] (8th Sess. Chap. 88.)

ARTICLE XXIII.

SCHOOL LIBRARIES.

Section 1030. Library fund.

" 1031. *Same.*

" 1032. *Same.*

" 1033. *Location and control of libraries.*

" 1034. *Rules. Reports.*

" 1035. *Selection of books.*

1030. *Library fund.*—A Library Fund is hereby created, and the board of school trustees must expend the Library Fund, together with such moneys as may be added thereto by donation, in the purchase of books for a school library, including books for supplementary work, *provided*, that in school districts other than cities, maintaining a free public library and having a population of two thousand or more such Library Fund may, in the discretion of the board of trustees, be used for the payment of the Cur-

rent expenses for maintenance of the Schools. [*Act approved February 14, 1905.*] (*9th Sess. Chap. 14.*)

1031. (§ 2001.) *Same.*—Except in cities having a population of two thousand or more, the library fund shall consist of not less than five nor more than ten per cent. of the county school fund annually apportioned to the district; *Provided*, That such ten per cent. exceed fifty dollars, fifty dollars only shall be apportioned to the district. [*Act approved March 11, 1895.*]

1032. (§ 2002.) *Same.*—In cities having a population of two thousand or more, the library fund shall consist of a sum not to exceed fifty dollars for every five hundred children or fraction thereof of three hundred or more, between the ages of six and twenty-one years, annually taken from the general school fund of the county apportioned to such district. [*Act approved March 11, 1895.*]

1033. (§ 2003.) *Location and control of libraries.*—Libraries shall be under the control of the board of trustees and must be kept, when practicable, in the school houses. [*Act approved March 11, 1895.*]

1034. (§ 2004.) *Rules. Reports.*—The trustees shall be held accountable for the proper care and preservation of the library, and shall make all needful rules and regulations not provided for by the superintendent of public instruction, and not inconsistent therewith; and they shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for the purpose by the superintendent of public instruction. [*Act approved March 11, 1895.*]

1035. (2005.) *Selection of books.*—All books shall be selected from lists approved by the superintendent of public instruction. [*Act approved March 11, 1895.*]

ARTICLE XXIV.

MISCELLANEOUS.

Section 1036. *Gender.*

“ 1037. *Fines and penalties.*

“ 1038. *Insult to teacher.*

“ 1039. *Disturbance of school.*

“ 1040. *Printing and binding.*

“ 1041. *School officers not to act as agents.*

“ 1042. *Oath of office.*

“ 1043. *Duty of county attorney.*

“ 1044. *Penalties.*

1036. (§ 2020.) *Gender.*—Whenever the word “he” or “his” occurs in this title, referring either to the members of the board of trustees, county superintendents, teachers, or other school officers,

it shall be understood to mean also "she" or "her." [*Act approved March 11, 1895.*]

1037. (§ 2021.) *Fines and penalties.*—All fines and penalties, not otherwise provided for in this title, shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection. [*Act approved March 11, 1895.*]

1038. (§ 2022.) *Insult to teacher.*—Any parent, guardian or other person, who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten dollars nor more than one hundred dollars. [*Act approved March 11, 1895.*]

1039. (§ 2023.) *Disturbance of school.*—Any person who shall wilfully disturb any public school or any public school meeting, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars. [*Act approved March 11, 1895.*]

1040. (§ 2024.) *Printing and binding.*—All printing or binding required under this title shall be executed in the form and manner and at a price not exceeding other county printing and shall be paid in like manner out of the general school fund. [*Act approved March 11, 1895.*]

1041. (§ 2025.) *School officers not to act as agents.*—Neither the superintendent of public instruction, nor any person in his office, nor any county superintendent, nor school district officer, nor any officer or teacher connected with any public school, shall act as agent or solicitor for the sale of any school books, maps, charts, school library books, school furniture or apparatus or furnish any assistance to or receive any reward therefor, from any author, publisher, bookseller or dealer, doing the same. Every person violating this section shall be deemed guilty of a misdemeanor and be liable to a fine of not less than fifty nor more than two hundred dollars for each offense, and shall be liable to removal from office therefor. [*Act approved March 11, 1895.*]

1042. (§ 2026.) *Oath of office.*—Any person elected or appointed to any office mentioned in this title shall, before entering upon the discharge of the duties thereof, take the oath of office. In case such officer has a written appointment or commission, his oath shall be endorsed thereon: otherwise it may be taken orally; in either case it may be sworn to before any officer authorized to administer all oaths relative to school business appertaining to their respective offices, without charge or fee. [*Act approved March 11, 1895.*]

1043. (§ 2027.) *Duty of county attorney.*—The county attorney shall be the legal adviser of the county superintendent,

and all school trustees, and shall prosecute and defend all suits to which a district may be a party. [*Act approved March 11, 1905.*]

1044. (§ 2028.) *Penalties.*—Any person who shall violate any provision of this title shall be deemed guilty of a misdemeanor (when not otherwise provided in this title) and upon conviction thereof shall be fined in a sum not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both such fine and imprisonment. [*Act approved March 11, 1895.*]

Hilbury v. St. P. R. Co., 23 Mont. 243; 58 Pac. 556.

TITLE IV.

STATE MILITIA.

CHAPTER I. ENROLLMENT OF MILITIA.

II. REGULATIONS FOR GOVERNMENT OF NATIONAL GUARD.

III. COURT MARTIAL.

CHAPTER I.

ENROLLMENT OF MILITIA.

Section 1045. Who comprise the militia.

- “ 1046. *Exemptions from military duty.*
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- “ 1049. *Duty of clerk and governor.*
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1045. *Who comprise the militia.*—The Militia of the State of Montana consists of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, inclusive, except such persons as are or may be exempted by the laws of the State or of the United States. [*Act approved March 9th, 1897, § 1.*] (5th Sess. 149.)

1046. *Exemptions from military duty.*—The following persons are exempt from Military duty and enrollment:

1. Civil and Military officers of the United States.
2. Civil officers of the State of Montana.
3. Idiots, paupers, habitual drunkards and persons convicted of infamous crimes. [*Act approved March 9th, 1897, § 2.*] (5th Sess. 150.)

1047. *Assessor to prepare military roll.*—The County Assessor of each County in the State, must, at the same time in each year when he prepares a roll containing the taxable inhabitants of

his County, enroll all the citizens thereof subject to military duty, which roll must be sworn to by him and delivered to the Clerk of the Board of County Commissioners, at the same time he delivers the assessment roll. [*Act approved March 9th, 1907, § 3.*] (*5th Sess. 150.*)

1048. *Penalty for neglect of duty.*—Any Assessor who neglects or refuses to perform any of the duties required of him by this Chapter is subject to the same liabilities as are provided by law for a neglect or refusal to perform any of the duties required of him in the assessment of taxes. [*Act approved March 9th, 1897, § 4.*] (*5th Sess. 150.*)

1049. *Duty of clerk and governor.*—The Clerk of the Board of County Commissioners of each County, must, within thirty days after the delivery of such Military roll to him by the assessor transmit a duplicate thereof to the Governor, and the Governor must inform each Legislative Assembly of the State of the number of the enrolled Militia thereof. [*Act approved March 9th, 1897, § 5.*] (*5th Sess. 150.*)

1050. *Governor as commander-in-chief.*—The Governor is the Commander-in-Chief of the Militia forces of the State except when these forces are in the actual service of the United States, and has power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection, or to repel invasion. [*Act approved March 9th, 1897, § 6.*] (*5th Sess. 150.*)

1051. *Armories.*—The Board of County Commissioners in each county in the State is hereby authorized, whenever they deem proper, to erect or provide in cities or towns where one or more companies of the National Guard are stationed in such County an armory; safe, suitable, and of sufficient size for the drill of such company or companies. [*Act approved March 9th, 1897, § 7.*] (*5th Sess. 150.*)

CHAPTER II.

REGULATIONS FOR GOVERNMENT OF NATIONAL GUARD.

Section 1052. Enrolled militia may volunteer.

“ 1053. *National Guard of Montana.*

“ 1054. *Governor commander-in-chief.*

“ 1055. *General staff.*

“ 1056. *Aids-de-camp.*

“ 1057. *National guard in time of peace.*

“ 1058. *National guard in time of war.*

“ 1059. *Uniform.*

“ 1060. *Organization the same as of United States Army.*

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1052. *Enrolled militia may volunteer.*—The members of the enrolled Militia may voluntarily organize and uniform as herein provided. [Act approved March 9th, 1897, § 8.] (5th Sess. 150.)

1053. *National Guard of Montana.*—The regularly enlisted, organized, and uniformed active Militia of Montana shall be

styled the National Guard of Montana and shall be subject at all times to the orders of their officers, and shall be composed of able-bodied citizens of Montana above the age of eighteen years. [*Act approved March 9th, 1897, § 9.*] (*5th Sess. 150.*)

1054. *Governor Commander in Chief.*—The Governor of Montana shall be Commander-in-Chief of the National Guard of Montana, and no company shall be organized without his permission in writing. [*Act approved March 9th, 1897, § 10.*] (*5th Sess. 150-151.*)

1055. *General Staff.*—In time of peace the General Staff shall consist of not more than eight, viz: One Adjutant General with the rank of Brigadier General, One Inspector General, One Surgeon General, One Quartermaster General, One Commissary General, with rank of Colonel, One Assistant Inspector General with the rank of Lieutenant Colonel, One Judge Advocate, and One Inspector of Rifle practice with the rank of Major and they shall hold their positions during the pleasure of the Governor. Said officers in time of peace shall not receive compensation except the Adjutant General who shall receive such compensation as provided by law. [*Act approved March 9th, 1897, § 11.*] (*5th Sess. 151.*)

1056. *Aids-de-camp.*—The Governor is hereby authorized to appoint such aids-de-camp, in time of peace not to exceed three, as he may require, each with the rank of Lieutenant Colonel. [*Act approved March 9th, 1897, § 12.*] (*5th Sess. 151.*)

1057. *National Guard in time of peace.*—In time of peace the National Guard shall consist of not more than one regiment of infantry, consisting of twelve or a less number of companies, two troops of cavalry, one battery of artillery, one signal corps to consist of not to exceed two officers and twenty-five enlisted men, one regimental band of not more than twenty-five members, one ambulance corps, and a medical department. [*Act approved March 9th, 1897, § 13.*] (*5th Sess. 151.*)

1058. *National Guard in time of war.*—In time of war, invasion, insurrection, riot or imminent danger thereof, the Governor has the power to make such alterations in the number, organization and arrangement of the National Guard from time to time as he thinks necessary. [*Act approved March 9th, 1897, § 14.*] (*5th Sess. 151.*)

1059. *Uniform.*—The uniform of the National Guard shall be the prescribed uniform of the United States Army, with the exception that the buttons shall bear the coat of arms of Montana. Any person not a member of the National Guard who shall wear its uniform shall be guilty of a misdemeanor. [*Act approved March 9th, 1897, § 15.*] (*5th Sess. 151.*)

1060. *Organization the same as of United States Army.*—No company shall consist of less than one Captain, one first Lieu-

tenant and forty enlisted men. In other respects the organization of brigades, regiments, battalions, squadrons and companies shall be the same as that prescribed for the United States Army. Any company having less than the number above specified for two consecutive months shall be disbanded and its members discharged from the service. [*Act approved March 9th, 1897, § 16.*] (5th Sess. 151.)

1061. *Pay of members.*—Each and every member of the National Guard of Montana shall receive a per diem of three dollars and the necessary transportation and subsistence when serving under order of the Governor to suppress riots or enforce the civil law, to be paid out of the Treasury of Montana on the order of the Governor. [*Act approved March 9th, 1897, § 17.*] (5th Sess. 151-2.)

1062. *Pay during encampment.*—In time of peace there shall be held every year an encampment of the National Guard, not to exceed ten days duration at the State Military Reservation (Old Fort Ellis) near Bozeman at such time as the Governor shall direct.

For services during such encampment the National Guard shall be entitled to the following per diem:

Privates and Musicians.....	\$1.50
Corporals	\$1.60
Sergeants	\$1.75
Non Commissioned Staff Officers and members of the Regimental Band.....	\$2.00
First and Second Lieutenants.....	\$2.25
Captains and all officers of higher rank.....	\$2.75

In addition to the per diem allowed above the necessary transportation and subsistence in going to and returning from such encampment shall be allowed. All of which shall be paid from the treasury of Montana on approval of the Governor. [*Act approved March 9th, 1897, § 18.*] (5th Sess. 152.)

1063. *Oath of officer.*—Every officer before he enters upon the duties of his office or exercises any command shall take and subscribe before any person duly authorized, the following oath: "I do solemnly swear that I will support the constitution of the United States, the constitution and the laws of the State of Montana, and I will obey all lawful orders of my superior officers for the period of my service." A similar oath or affirmation shall be administered to every enlisted man at the time of his enlistment and all officers of the National Guard are hereby authorized and empowered to administer oaths and affirmations in all matters appertaining to or concerning the National Guard service, but in no case shall they charge any fee or compensation therefor. Any person who shall falsely swear to any oath or affirmation so administered shall upon trial and conviction be deemed guilty

of perjury and punished for such offense as provided by law. [*Act approved March 9th, 1897, § 19.*] (5th Sess. 152.)

1064. *Discharge of officer.*—The Commander-in-Chief may discharge an officer: First, upon sentence of dismissal of such officer by General Court Martial after trial according to law. Second, when such officer shall have been convicted of felony. Third, when such officer shall have been absent from his command, without leave for thirty days. [*Act approved March 9th, 1897, § 20.*] (5th Sess. 152.)

1065. *Commission and rank of officer.*—The Governor shall issue a commission to all officers elected or appointed, which election or appointment shall be approved by him. Every commission shall be countersigned by the Secretary of State, and attested by the Adjutant General, and continued during the pleasure of the Governor. All officers shall take rank according to the date of their commission and when two of the same grade rank from the same date, their rank shall be determined by length of service in the National Guard of Montana, and if equal duty then by lot. [*Act approved March 9th, 1897, § 21.*] (5th Sess. 152-3.)

1066. *Term of service. Resignation of officer.*—Every man who shall have been mustered or enlisted in the National Guard shall be held to service therein for three years unless sooner discharged as herein provided. Any officer may resign his commission to his immediate commanding officer in writing, who shall promptly forward the same to the Adjutant General. The Governor shall by order accept or reject the same, and, if accepted, fix the date of its taking effect. No resignation shall take effect except as so ordered. Vacancies caused by death, resignation, promotion, discharge, or removal of any company officer shall be filled by the promotion of the officer of such company next in rank, subject to the approval of the Governor. [*Act approved March 9th, 1897, § 22.*] (5th Sess. 153.)

1067. *Discharge of enlisted men.*—Enlisted men shall be honorably discharged only upon certificates thereof signed by the company commander and indorsed by the Adjutant General with the Governor's approval. Such discharge shall not be granted except after three years service or for some absolute disability, occurring after entering the service or unless the member discharged permanently removes his residence out of the county or unless the Governor shall order the same for other good cause. Any member who absents himself from all meetings for instruction during a period of thirty days unless properly excused by his commanding officer in addition to all other penalties, be debarred from the exemption from jury duty, be considered a deserter, and dishonorably discharged from the military service of the State. [*Act approved March 9th, 1897, § 23.*] (5th Sess. 153.)

1068. *Members exempt from jury duty and poll tax.*—Every member of the National Guard shall be exempt from jury duty and from the payment of poll tax of every description and every member who shall be honorably discharged after nine years service, or by reason of injuries received in the line of duty shall be forever exempt, and also exempt from military duty in time of peace. The proper discharge certificate shall be conclusive evidence of the right of such exemption. [*Act approved March 9th, 1897, § 24.*] (5th Sess. 153.)

1069. *Dishonorable discharge.*—Any enlisted man may be dishonorably discharged from the military service of this State for any of the following causes:

First. Absence from his command when called out to suppress riot, or for other active duties.

Second. Desertion.

Third. Insubordination, immoral conduct or intemperance. [*Act approved March 9th, 1897, § 25.*] (5th Sess. 153-4.)

1070. *Disbanding National Guard.*—Upon recommendation by the Adjutant General and the regimental or squadron commander, the Governor shall at any time disband any portion of the National Guard. [*Act approved March 9th, 1897, § 26.*] (5th Sess. Chap. 154.)

1071. *Vacancies, how filled.*—Vacancies in the grade of Second Lieutenant and field officers in the National Guard are filled by election. The former by the members of the company; and the latter by the company officers of the regiment. [*Act approved March 9th, 1897, § 27.*] (5th Sess. 154.)

1072. *Rules of discipline.*—The rules of discipline and the regulations of the Army of the United States shall so far as the same may be applicable constitute the rules of discipline and the regulations of the National Guard of this State and the rules and articles of war established by Congress and the War Department for the United States shall be adopted so far as applicable for the National Guard of this State; and the system of instruction and the drill regulations prescribed for the different arms and corps of the United States Army, shall be followed in the military instruction and practice of the National Guard of this State and the use of any other system is forbidden. [*Act approved March 9th, 1897, § 28.*] (5th Sess. 154.)

1073. *Interference with soldiers.*—All persons who in any manner interrupt or molest the orderly discharge of duty of those under arms must be immediately arrested. The Governor may prohibit and prevent the sale of spirituous liquors within one mile of such parade or encampment and also in his discretion gambling may be abated as a nuisance. [*Act approved March 9th, 1897, § 29.*] (5th Sess. 154.)

1074. *Molesting or insulting officers or soldiers.*—If any person interrupts, molests, or insults by abusive words or behavior any officer or enlisted man in the performance of his military duty, such person shall be guilty of a misdemeanor and must be placed under guard until turned over to the civil authorities, *provided*, that the duration of such confinement shall not exceed twenty-four hours. [Act approved March 9th, 1897, § 30.] (5th Sess. 154.)

1075. *Duties of adjutant general as to exemptions.*—On or before the first Monday in March of each year the Adjutant General shall make out and transmit to the County Assessor of each county a list of members of the National Guard resident in such county together with a statement of the exemption to which they are entitled by law; and the County Assessor must thereupon note opposite the name of each person on the Assessment roll the facts of such exemption. [Act approved March 9th, 1897, § 31.] (5th Sess. 154.)

1076. *Governor may make regulations.*—The Governor is authorized, and has the power to establish and prescribe such rules and regulations not inconsistent with the provisions of law as he may deem proper for the use, government and instruction of the National Guard, and to carry into full effect the provisions of law relative thereto. [Act approved March 9th, 1897, § 32.] (5th Sess. 154-5.)

1077. *Guard must display national or state flags only.*—No military organization provided for by the Constitution or laws of this State and receiving State support must while under arms, either for ceremony or service carry any device, banner or flag of any State or Nation except that of the United States or that of the State of Montana. [Act approved March 9th, 1897, § 33.] (5th Sess. 155.)

1078. *Care of wounded or disabled, and pension.*—Every member of the National Guard wounded or disabled in the service of this State must have reasonable expenses paid him and the widow and children of every such member killed in the service of this State must be suitably provided for by the Legislative Assembly. [Act approved March 9th, 1897, § 34.] (5th Sess. 155.)

1079. *Inspection of Guard.*—There shall be an inspection of every organization of the National Guard between the first of April and the thirtieth of May in each year. This inspection shall be made by an officer detailed by the Governor. This officer shall notify the commanders of the respective organizations the hour and place at which they shall assemble for such inspection. The inspection officer shall make a report and forward the same to the Adjutant General and if, after examination by him of the muster roll and report of the

inspecting officer each company is fully up to the required standard of numbers, discipline and efficiency, the Adjutant General shall so report to the State Board of Examiners. This Board must on receipt of the Adjutant General allow to each Company annually the sum of four hundred dollars and for each man additional to the minimum who may have been present at the annual inspection and the last camp of instruction five dollars extra; and to each troop or battery five hundred and fifty dollars, with five dollars extra for every man additional as above, such Board must order the State Auditor to draw a warrant on the State Treasurer in favor of the commander of each company for the sum above stated. In case of the regimental band a warrant drawn in favor of the regimental commander in the sum of two hundred dollars per annum; and in case of the signal corps a warrant drawn in favor the signal officer for the sum of two hundred dollars. All moneys allowed in this section are to be used for military purposes only. [Act approved March 9th, 1897, § 35.] (5th Sess. 155.)

1080. *Property of disbanded companies.*—When a company is disbanded or mustered out all property and money in the treasury of such company must revert to the State. [Act approved March 9th, 1897, § 36.] (5th Sess. 155.)

1081. *Expense, how allowed.*—No bill of allowance authorized by the provisions of this title must be approved by the State Board of Examiners unless the said bill or claim is itemized or approved by the Adjutant General. [Act approved March 9th, § 37.] (5th Sess. 155-6.)

1082. *Military stores are property of state.*—Arms, ordnance, quartermaster's stores, camp equipage and other military property whether issued by the United States as the property thereof or purchased, owned and issued by Montana is for all purposes of this title the property of the State of Montana and must be used only in the discharge of Military duties. [Act approved March 9th, 1897, § 38.] (5th Sess. 156.)

1083. *Commanding officer to make itemized returns.*—The commanding officer of each company must at each annual inspection return in duplicate to the inspecting officer an itemized account and statement of all public property and of all disbursements of the money appropriated during the preceding year by said company which account and statement must be verified by the oath of the commanding officer and must be accompanied by the proper vouchers for such disbursements, such return shall be certified to by the inspecting officer and forwarded by him with his report to the Adjutant General. [Act approved March 9th, 1897, § 39.] (5th Sess. 156.)

1084. *Application for organization of company.*—Whenever forty-five persons resident and liable to military duty in any county shall subscribe and present to the Governor an application for the organization of a military company he may, at his discretion, appoint some competent person as mustering officer, to muster such company and perfect the organization thereof; *provided*, the whole number of companies shall not exceed the number fixed in Section 1057 (13), of this Act, such mustering officer shall forthwith fix a time and place of meeting for the purpose of such muster and organization, and give not less than ten nor more than thirty days notice thereof, by publication in some newspaper published in the county, or by posting notices in three or more public places in the county. [*Act approved March 9th, 1897, § 40.*] (5th Sess. 156.)

1085. *Mustering officer to preside at organization.*—The mustering officer shall preside at such meeting which may be adjourned from time to time and shall provide a muster roll which each person so volunteering, who shall be accepted as competent by such officer, shall sign; and such signature and muster roll shall be conclusive evidence that such volunteer is subject to all the obligations imposed by law upon the members of the National Guard. When at least forty-five persons shall have been so mustered in they shall proceed at such meeting to elect by ballot, under the superintendence of such mustering officer the several officers required by law, and a majority shall be necessary to a choice. After such election the names and rank of such officers shall be entered upon the muster roll, and the mustering officer shall certify and forward the same together with a copy of the proceedings and notice of such meeting to the Adjutant General. If it shall appear that such organization shall have been perfected and such officers elected according to law, and the Governor shall approve such organization and officers, such company shall be enrolled as part of the National Guard and the officers commissioned. If the Governor disapprove of such organization, he may, at his discretion, direct another meeting to perfect the same. If he disapprove of any officer so elected he may direct other meeting or meetings to elect others in stead. [*Act approved March 9th, 1897, § 41.*] (5th Sess. 156-7.)

1086. *Distribution of military property.*—The Adjutant General shall upon the direction of the Governor make such distribution of the military property as will most effectually subserve the military interests or necessities. He shall cause to be distributed to the officers and organizations such property and blanks as may be required. Company Commanders and all other officers shall make a quarterly return to the Adjutant General, upon such blanks as he may require of all public stores or property in their possession or for which they may be responsible. [*Act approved March 9th, 1897, § 42.*] (5th Sess. 157.)

1087. *Bond of officers.*—Each officer responsible for public property or stores shall execute to the State a bond with such sureties and in such form as the Governor shall approve and in a sum not less than double the value of such property or stores, conditioned for the faithful care and preservation of such property or stores as shall be by him received from the State, to indemnify the State against any loss by misuse or misapplication of any part thereof by himself or by any other person; to account for the same according to law and to deliver the same to any officer lawfully entitled thereto on demand and to pay all sums lawfully appraised for losses or damages; the bond to be filed in the office of the Adjutant General. Public property and stores shall be issued only after the receipt of the bond above described, by the Adjutant General and upon a requisition by the responsible officer approved by the Adjutant General. [*Act approved March 9th, 1897, § 43.*] (5th Sess. 157.)

1088. *Examination of stores.*—All arms, equipments, military stores, books, accounts, and records of all kinds are subject to examination by any officer detailed by the Governor for that purpose. [*Act approved March 9th, 1897, § 44.*] (5th Sess. 157.)

1089. *Uniforms not to be worn except when on duty.*—No member of the National Guard must wear, or use, except when on military duty, or by special permission of his commanding officer, any uniform or other article of military property belonging to the State, or to the company to which he is a member, although an officer who has receipted for public property is personally and officially responsible and accountable therefor; Yet all commanding officers are also responsible that the best arrangements are made for the safety and security of all public property within their commands and for the strict observance of the regulations in regard to its care, removal, use or issue. [*Act approved March 9th, 1897, § 45.*] (5th Sess. 157-8.)

1090. *Definition of company and officer.*—Whenever the word company is used in a military sense in this Act it shall be understood and construed to mean a company of infantry, troop of cavalry, or battery of artillery. Whenever the word officer occurs in this Act it shall be understood and construed to mean a commissioned officer unless otherwise specified. [*Act approved March 9th, 1897, § 46.*] (5th Sess. 158.)

1091. *Expense of mounted officers and headquarters.*—Each mounted officer shall receive actual expenses for a horse at all parades and services required by land. There shall be appropriated annually for the expense of regimental headquarters the sum of two hundred dollars to be paid at the same time and in the same manner as annual appropriation for the various organizations of the National Guard. [*Act approved March 9th, 1897, § 47.*] (5th Sess. 158.)

1092. *Adjutant General, duties, powers, and compensation.*—The Adjutant General shall be Chief of Staff. In his absence or inability, from sickness or other cause, to perform his duties the Governor may appoint an acting Adjutant General who shall serve without pay. The Adjutant General shall have the custody of all military records, returns, reports, correspondence, muster rolls and other documents relating to the National Guard heretofore or hereafter organized. He shall be the medium of military correspondence with the Governor and perform all other duties pertaining to his office or prescribed by law. He shall be ex-officio custodian of the State Property. He shall biennially on or before the first day of December, make a report to the Governor to be laid before the Legislature, of all the transactions of his department since the last biennial report, and setting forth the number, strength and condition of the National Guard, and such other matters as he may deem important. He shall also make and transmit to the President the annual returns required by the laws of the United States, and at the same time submit to the Governor a duly certified copy thereof. The Adjutant General must give a bond in the sum of five thousand dollars with sufficient sureties. The Adjutant General shall receive a salary of twelve hundred dollars per annum and also his necessary expenses, which shall not exceed five hundred dollars annually, while absent from his office on official business which shall also be payment in full for all services rendered by him under this or any other law of the State; and the same shall be audited and paid in the same manner as the salaries and expenses of other State officers are paid. [Act approved March 9th, 1897, § 48.] (5th Sess. 158.)

1093. *Medical corps, organization.*—The medical department of the National Guard of Montana shall be organized as follows, the Surgeon General shall be the head of the department. There shall be as many majors as there are brigades and regiments and as many Captains as there are battalions of infantry, companies of cavalry and batteries. Said officers to have the rank and pay of majors and captains mounted. A hospital corps may be organized by order of the Governor. [Act approved March 9th, 1897, § 49.] (5th Sess. 159.)

1094. *Medical corps officers.*—Medical officers may be commissioned by the Governor upon the recommendation of the Surgeon General, or otherwise, from the Physicians of the towns where the Military companies are stationed; and any vacancies shall be filled by the promotion of the Medical officer next in rank, unless such promotion be waived or the Governor order otherwise. [Act approved March 9th, 1897, § 50.] (5th Sess. 159.)

1095. *Surgeon General.*—The Surgeon General shall, under the direction of the Governor, have general supervision of the selection, purchase and distribution of all Medical and hospital supplies and he is hereby authorized, with the approval of the Governor, to purchase such medical and hospital supplies as may be necessary, he shall make, subject to the approval of the Governor, such regulations for the government of his department as he may deem necessary, he shall submit to the Adjutant General annually on the first day of November, a report with an itemized statement of the affairs and expenses of his department. The duties of the Majors and Captains of the Medical department shall be such as may be provided for by the United States or State Regulations. [Act approved March 9th, 1897, § 57.] (5th Sess. 159.)

1096. *When National Guard may be called into service.*—In case of war, insurrection, or rebellion, or of resistance to the execution of the laws of this State, or upon the call or requisition of the President of the United States or upon the call of any officer of the United States Army commanding a military invasion, department or district, of which Montana forms a whole or part or upon the call of any United States Marshal in Montana, or of the Chief Executive of any city, or of any sheriff, the Governor may order into active service any portion or the whole of the National Guard or enrolled militia. [Act approved March 9th, 1897, § 52.] (5th Sess. 159.)

1097. *How call made.*—Companies and other organizations herein provided for shall be subject only to the direct call of the Governor of Montana. Such call must be made by an order issued and directed to the commanding officer of the organization ordered into active service, designating the particular troops called, the time and place of rendezvous and the officer to whom they must report. [Act approved March 9th, 1897, § 53.] (5th Sess. 159.)

1098. *Draft.*—When the enrolled militia or any portion is ordered into active service and the number responding to such order is not sufficient the Adjutant General must promptly proceed to draft from the enrolled militia such a number of men as will satisfy the order; and this draft must be made by putting the names of the enrolled militia of the county or counties from which the order directs the force to be raised into a box and drawing therefrom the number of names necessary to satisfy the order. As soon as a sufficient number of men may have reported at the rendezvous they will proceed to the election of their officers, if so directed by the officer to whom they have been directed to report. [Act approved March 9th, 1897, § 54.] (5th Sess. 159-160.)

1099. *Penalty for failure to report.*—Any member of the National Guard who neglects or refuses to rendezvous at the designated place when ordered out by the Governor, is guilty of disobedience of orders, and may be tried and punished by a general court martial.

Any member of the enrolled militia who refuses or neglects to rendezvous when drafted, is subject to a penalty of not less than one hundred nor more than three hundred dollars, to be recovered by an action brought by the County Attorney, in the name of the State, upon the certificate of the officer appointed to make the draft before any court of competent jurisdiction in the county from which such persons were drafted, and the fine recovered must be paid into the state treasury to the credit of the General Fund. [Act approved March 9th, 1897, § 55.] (5th Sess. 160.)

1100. *Officers in active service, duration of commission and promotion.*—The commission of any officer ordered into active service continues until he is discharged or his resignation is accepted by order of the Governor. In filling vacancies in the line of commissioned officers in active service, the Governor must as a rule promote by seniority, or upon the recommendation of their superior officers, those in active service. [Act approved March 9th, 1897, § 56.] (5th Sess. 160.)

CHAPTER III.

COURTS MARTIAL.

Section 1101. Violation of this act punishable by court martial.

“ 1102. *Constitution of courts of inquiry and courts martial.*

“ 1103. *Jurisdiction of courts martial in times of peace.*

“ 1104. *Notice and specification of charge.*

“ 1105. *Fines, how collected.*

“ 1106. *Imprisonment of offenders.*

“ 1107. *Procedure upon non-appearance at trial.*

“ 1108. *Subpoenas for witnesses.*

“ 1109. *Failure of witnesses to appear.*

“ 1110. *Attachment for witnesses.*

1101. *Violations of this act punishable by court martial.*—A violation of any of the sections of this act on the part of any member of the National Guard of Montana shall subject the offender to trial by general court martial and punishment by such sentence as the Court martial is hereby authorized to inflict. [Act approved March 9th, 1897, § 57.] (5th Sess. 160.)

1102. *Constitution of Courts of inquiry and courts martial.*—Courts of inquiry and Courts Martial may be instituted for

similar purpose and under similar conditions as such courts are in the Army of the United States, and they shall be constituted and convened as nearly as practicable as similar courts are constituted and convened by the laws, regulations and articles of war for the government of the Army of the United States and the procedure thereof shall be the same as prescribed by such laws, regulations and articles, except as in this Act otherwise specifically provided. [*Act approved March 9th, 1897, § 58.*] (*5th Sess. 160.*)

1103. *Jurisdiction of courts martial in time of peace.*—In time of peace the jurisdiction of Courts Martial shall extend to and include the trial of all offenses against military law, order or discipline, to non-attendance at drills, to abuse or neglect of public property or stores and insubordination, disrespectful conduct towards a superior officer or non-commissioned officer, and all minor offenses against military discipline, their sentences, except as otherwise provided in this Act, may inflict one or more of the following punishments, namely:

Reprimand, forfeiture in whole or part of pay or allowance, a fine not exceeding one hundred dollars, or in default of payment of the same for twenty days, in case of an enlisted man, dishonorable discharge from the service, of a commissioned officer, dismissal from the service of the State. [*Act approved March 9th, 1897, § 59.*] (*5th Sess. 160-161.*)

1104. *Notice and specification of charge.*—No officer or enlisted man shall be brought to trial until ten days after a copy of the order convening the Court and of the charges and specifications shall have been delivered to the accused, unless the exigencies of the service demand an immediate trial, in which case the order convening the Court shall state that the exigencies of the service demand an immediate trial. [*Act approved March 9th, 1897, §-60.*] (*5th Sess. 161.*)

1105. *Fines, how collected.*—The president of the Court Martial shall issue his warrant for the collection of all fines imposed by the Court upon approval of the sentence by the officer ordering the Court or to the sheriff or any constable of the county in which the court was held, or in which the delinquent resides, whose duty it shall be to collect all fines provided for by this Act in the same manner as he is authorized to collect debts in civil process, and make his return to the President of the said Court or within thirty days certify to the said President that there is no property of the defendant out of which said moneys can be made. Warrants may issue to the sheriff or any constable of any county in which any property, not exempt from execution, of the offender may be, out of which any such fines may be collected and such warrants may be issued and executed in the same manner as executions are issued and executed out of the

District Court. [*Act approved March 9th, 1897, § 61.*] (5th Sess. 161.)

1106. *Imprisonment of offenders.*—The keepers and wardens of all county jails are required to receive and confine all military offenders when delivered by such sheriff or constable under the proper certificate of commitment of the president of a General Court Martial for and during the term of sentence as set forth in said commitment. [*Act approved March 9th, 1897, § 62.*] (5th Sess. 161.)

1107. *Procedure upon non-appearance at trial.*—After the return of a summons citing the accused to appear and he fails to appear at the time and place designated for the trial, the President of the Court shall issue his warrant for the arrest of the delinquent, addressed to the sheriff or a constable of the county, who shall forthwith execute such warrant and make proper return thereon to said court and produce to the court the body of the accused, if within said county, and retain custody thereof until the conclusions of the trial and approval or disapproval of the proceedings unless sooner discharged by order of the President of the Court Martial. [*Act approved March 9th, 1897, § 63.*] (5th Sess. 161-2.)

1108. *Subpoenas for witnesses.*—The President of every Court Martial and of every court of inquiry shall issue subpoenas for all witnesses whose presence may, in his opinion, be necessary. The President of every Court Martial or court of inquiry shall have the same power to compel attending witnesses to be sworn and testify and to preserve order as courts of common law jurisdiction, and all sheriffs, jailors and constables are hereby required to execute any precept or process issued by such President for that purpose. [*Act approved March 9th, 1897, § 64.*] (5th Sess. 162.)

1109. *Failure of witness to appear.*—Every witness not appearing in obedience to such subpoena when duly served, and not having a sufficient or reasonable excuse, shall forfeit to the State of Montana a sum not less than ten nor more than fifty dollars for each default, and the President of such Court shall from time to time, report to the County Attorney the names of such delinquent witnesses together with the names and respective residences of the persons serving such subpoenas, the better to prosecute for such forfeiture. [*Act approved March 9th, 1897, § 65.*] (5th Sess. 162.)

1110. *Attachment for witnesses.*—When it shall appear to the satisfaction of any Court Martial or Court of Inquiry by proof made before such Court that any person duly subpoenaed to appear as a witness before such court, shall have refused or neglected without just cause to attend as such witness, in conformity to such subpoena and the party in whose behalf such witness shall

have been subpoenaed shall make oath that the testimony of such witness is material, such court by its President shall have the power to issue an attachment to compel the attendance of such witness. [Act approved March 9th, 1897, § 66.] (5th Sess. 162.)

TITLE V.

PUBLIC INSTITUTIONS.

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CHAPTER I.

THE INSANE.

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ARTICLE I.

INSANE ASYLUM.

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| " | 1116. | <i>Care of insane must be provided for.</i> |
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| " | 1118. | <i>Contract must specify rate.</i> |
| " | 1119. | <i>Contractor must give bond.</i> |
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1111. (§ 2260.) *State insane asylum.*—The state insane asylum is established and located at Warm Springs and until its management and control are provided for by law, the care of the insane of the state is prescribed in this chapter.

1112. (§ 2261.) *Board of commissioners of the insane.*—The governor, the secretary of state, and the attorney general constitute the state board of commissioners for the insane, of which the governor is president, and the secretary of state, the secretary.

1113. (§ 2262.) *Powers and duties of board of commissioners.*—The powers and duties of such board are as follows:

1. To make rules and regulations for their own government not inconsistent with the laws of the state.

2. To provide by contract for the care, custody, maintenance and treatment of the insane, in a safe and suitable building for that purpose which is known as the state insane asylum.

3. To make inquiry into the condition of the asylum and to see that the patients are properly cared for in respect to clothing, food, medical attendance, and that they have proper apartments.

4. To make a report biennially to the legislative assembly giving a statement of the receipt and expenditures, the condition of the asylum, the number of patients under treatment and such matters as may be advisable.

5. To keep a record of their proceedings, which must be open at all times to the inspection of any citizen.

1114. (§ 2263.) *Board must contract.*—The board is hereby authorized to enter into a contract for the care and maintenance of the indigent insane, and to let the same to the lowest responsible bidder, and such board must publish for three weeks in a newspaper published at the seat of government of the state, for proposals for such care and maintenance.

1115. (§ 2264.) *Board may reject all bids.*—The board has the right to reject any and all bids, and to make a contract, in case such a contract can be made at a less price than any of the bids made therefor under such publication. Such contract must not be continued beyond the period of two years, or beyond the completion of the state asylum for the insane.

1116. (§ 2265.) *Care of insane must be provided for.*—Under such contract, whether made upon the bids or otherwise, the care and maintenance of the indigent insane must be provided for.

1117. (§ 2266.) *What the contract must provide.*—The contract must provide that the contractor furnish all necessary attendance and assistants required by the medical and all other departments in said asylum, and that there be furnished well ventilated, properly warmed and suitable rooms or apartments, and good and wholesome food and comfortable clothing for the patients of the asylum, as well as the necessary medicine and medical attendance, and that the contractor pay all the expenses of the same.

1118. (§ 2267.) *Contract must specify rate.*—The contract must also specify the rate per head per week for such care and maintenance and medical treatment of said patients.

1119. (§ 2268.) *Contractor must give bond.*—The contractor must give a bond in such a sum as may be approved by the board for the faithful performance of his obligations under the

contract, which bond must be approved by the board, filed with the secretary of state.

1120. (§ 2269.) *Must make quarterly report.*—The contractor must make a quarterly report to the board of the number of patients treated, cared for and discharged from the asylum during the quarter, and upon receipt of such report the board must report the same to the board of examiners, who must require the state auditor to draw a warrant upon the state treasurer in favor of the contractor for the amount due him, payable out of the general fund in the state treasury.

ARTICLE II.

GENERAL PROVISIONS.

- Section 1121. Board may send patient to friends.*
“ 1122. *May contract with some other institution.*
“ 1123. *Idiotic persons are considered insane persons.*
“ 1124. *Discharge of patient.*
“ 1125. *Indigent persons discharged must be furnished with money and clothes.*
“ 1126. *Postal rights of insane patients.*
“ 1127. *Same.*
“ 1128. *Postoffice box must be provided.*
“ 1129. *Name of correspondent must be posted.*
“ 1130. *Copy of law posted in asylum.*
“ 1131. *Insane convicts.*
“ 1132. *Non-resident insane must not be received.*
“ 1133. *Insane person not indigent must be paid for.*

1121. (§ 2280.) *Board may send patient to friends.*—The board may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

1122. (§ 2281.) *May contract with some other institution.*—The board may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

1123. (§ 2282.) *Idiotic persons are considered insane persons.*—Idiotic persons are considered as insane persons.

1124. (§ 2283.) *Discharge of patient.*—The board must cause to be discharged from the asylum any patient, upon the written report of any person appointed by the board to examine into the condition of such patient, that such patient is in fit condition to be at large. Such written report must be filed and kept in the office of the board, and every insane person, on re-

covery, must be discharged from the asylum or place of confinement.

1125. (§ 2284.) *Indigent persons discharged must be furnished with money and clothes.*—Any indigent person about to be discharged from the asylum must be furnished with twenty dollars in money and a suit of comfortable clothes, including hat, shoes and socks, for which the contractor may be allowed on presenting the claim to the board of examiners, the amount paid.

1126. (§ 2285.) *Postal rights of insane patients.*—The patients of all insane asylums, or any place where the insane are kept or confined in this state, must each be allowed to choose one person, in no way connected with such asylums or place to whom he may write letters whenever and whatever he may desire, and over the letters to such person there must be no censorship exercised or allowed by any asylum official, contractor, employe or other person. The postal rights of such patients as to the persons chosen by them, must be as free and unrestricted as are those of any resident of the state. Every patient has the right, once in three months, to choose a different person for his correspondent.

1127. (§ 2286.) *Same.*—The contractor or person in charge of every asylum or other place where the insane are confined in this state must furnish to every patient thereof, suitable material for writing, inclosing, sealing, stamping and mailing letters at least twice a week.

1128. (§ 2287.) *Postoffice box must be provided.*—All such letters must be dropped by the writers thereof, accompanied by an attendant when necessary, into a postoffice box provided by the state at the insane asylum, and kept in some place easy of access to all patients; the attendant is required in all cases to see that these letters are directed to the patient's correspondent, and if it is not so directed it must be held subject to the disposal of the person in charge, and the contents of these boxes must be collected once every week by an authorized person and by him placed in the United States mail for delivery.

1129. (§ 2288.) *Name of correspondent must be posted.*—The contractor, or person in charge, must register and post in some place in the asylum the name of the person chosen as the patient's correspondent, and by what patient chosen, and the contractor or the person in charge must inform each of the persons chosen of that fact, and request him to write on the outside of the envelope of every letter he writes the patient, his name, and all the letters bearing such superscription on the envelope must be delivered without opening or reading, to the patient.

1130. (§ 2289.) *Copy of law posted in asylum.*—A printed copy, in large type, of the next preceding four sections, must be

kept posted in every room of every asylum or other place where the insane are confined in this state.

1131. (§ 2290.) *Insane convicts.*—Insane convicts must be received into the asylum and returned to the state prison again, as provided in the Penal Code.

1132. (§ 2291.) *Non-resident insane must not be received.*—No insane person, non-resident of this state, must be received into the asylum unless he became insane within this state.

1133. (§ 2292.) *Insane person not indigent must be paid for.*—None but indigent persons must be received into the insane asylum unless their care and maintenance is paid or guaranteed by the parents, children or guardians of such person, and all money received by the contractor for the care and maintenance of such persons, must be accounted for in his settlement with the board.

ARTICLE III.

EXAMINATION AND COMMITTAL OF INSANE PERSONS. .

Section 1134. *Examination before whom.*

“ 1135. *Evidence, number of witnesses.*

“ 1136. *Examining physicians.*

“ 1137. *Witnesses, duty of.*

“ 1138. *Physicians, duty of.*

“ 1139. *Certificate of physicians.*

“ 1140. *Forms of certificates.*

“ 1141. *Commitment.*

“ 1142. *Delivery of insane person at asylum.*

“ 1143. *Moneys of insane persons.*

“ 1144. *Fees of physicians.*

“ 1145. *Cost of examination and commitment.*

“ 1146. *Proceedings before commissioner. Review by district judge.*

“ 1147. *Maintenance of insane person.*

1134. *Examination, before whom.*—Whenever it appears to the satisfaction of the magistrate of the county that any person within the county is so far disordered in his mind as to endanger health, person or property, he must issue and deliver to some peace officer for service a warrant directing that such person be arrested and taken before any district judge in the county, for examination, *provided*, that if the district judge is absent from the county wherein such person is arrested, then the said insane person shall be taken before the Chairman of the Board of County Commissioners. [Act approved March 8th, 1897, § 1.] (5th Sess. 163.)

1135. *Evidence, number of witnesses.*—When the person is taken before the judge or the chairman of the board of county commissioners, the judge or chairman of said Board must issue

subpoenas to two or more witnesses best acquainted with said insane person, to appear before him and testify at such examination. [Act approved March 8th, 1897, § 2.] (5th Sess. 163.)

1136. *Examining physicians.*—The judge, or in case of his absence, the chairman of the Board of County Commissioners, must also issue subpoenas for at least two graduates of medicine to appear and attend such examination. [Act approved March 8th, 1897, § 3.] (5th Sess. 163.)

1137. (§ 2303.) *Witnesses, duty of.*—At the examination the persons subpoenaed must appear and answer all questions pertinent to the matter under investigation.

1138. (§ 2304.) *Physicians, duty of.*—The physicians must hear such testimony and must make a personal examination of the alleged insane person.

1139. (§ 2305.) *Certificate of physicians.*—The physicians after hearing the testimony and making the examination, must, if they believe such person to be dangerously insane, make a certificate, under their hand showing as near as possible:

1. That such person is so far disordered in his mind as to endanger health, person, or property.

2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease.

3. The nativity, age, residence, occupation, and previous habits of the person.

4. The place from whence the person came, and the length of time he has resided in this state.

1140. (§ 2306.) *Forms of certificates.*—The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the board of the commissioners for the insane.

1141. *Commitment.*—The judge, or the Chairman of the Board of County Commissioners, if the hearing be had before him, after such examination and certificate made, if he believes the person so far disordered in his mind, as to endanger health, person or property, must make an order that the party be confined in the insane asylum, and a copy of such order must be filed with and recorded by the Clerk of the District Court of the County. The Clerk must also keep in convenient form an index book showing the name, age, and sex of each person, so ordered to be confined in the insane asylum, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the Clerk for performing any of the duties provided for by this section or in this article. [Act approved March 8th, 1897, § 4.] (5th Sess. 163.)

Walter v. Mitchell, 25 Mont. 388, 65 Pac. 6. A complaint alleging that an insane person was "so declared by a court of competent jurisdiction" and "was duly committed to the insane asylum" does

not show the duty of the keeper of the asylum to receive and keep him. The allegation does not show the name of the court, or that any order was made or delivered to such keeper.

1142. *Delivery of insane person at asylum.*—The insane person, together with the order of the judge or the Chairman of the Board of County Commissioners, and the certificate of the physicians must be delivered to the sheriff of the County, and by him must be delivered to the officer in charge of the insane asylum. [Act approved March 8th, 1897, § 5:] (5th Sess. 164.)

1143. *Moneys of insane person.*—Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge, or the Chairman of the Board of County Commissioners, and sent with such person to the asylum, there to be delivered to the person in charge of the asylum, whose receipt therefor shall be taken by the sheriff, or other officer delivering said insane person to said asylum. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of said person while in the asylum. If the sum is one hundred dollars, or less, it must be kept and delivered to the person when discharged or applied to the payment of funeral expenses if the person dies at the asylum. Any balance of said one hundred dollars or less remaining in the hands of the officers of the asylum, after the death of the insane person, shall be returned to the County Treasurer of the County from which said insane person was sent, and if any sum remains after paying costs of trying and transporting said insane person to the asylum, this balance shall be paid into the State Treasury to the credit of the General Fund. [Act approved March 8th, 1897, § 6.] (5th Sess. 164.)

1144. (§ 2310.) *Fees of physicians.*—The physicians attending each examination of an insane person are allowed five dollars each, to be paid by the county treasurer of the county where the examination was had, on the order of the board of county commissioners.

1145. (§ 2311.) *Cost of examination and commitment.*—The costs of the examination, committal and taking an insane person to the asylum must be paid by the county in which he resides at the time he is adjudged insane. The sheriff must be allowed the actual expenses incurred in taking an insane person to the asylum, and no more.

Note—See Sec. 4604, Political Code.

1146. *Proceedings before commissioners. Review by district judge.*—Whenever any insane person is examined and committed by hearing had before the Chairman of the Board of County Commissioners it shall be the duty of said Chairman to have all the evidence reduced to writing, and the same, together with all orders, subpoenas, complaints, warrants and papers used on said hearing, or made by said Chairman of the Board of County Commissioners, shall be filed in the office of the Clerk of the District Court, of the proper county, and said Clerk shall enter

upon the journal of the minutes of Probate proceedings, a transcript of all proceedings had by the Chairman of the Board of County Commissioners at any examinations and committal of an insane person, in the same manner as proceedings in probate in vacation are entered by the Clerk of the Court, and it shall be the duty of the District Judge at the first term of Court, after such examination to examine and approve such proceedings or said insane inquest and committal, in the same manner as probate proceedings transacted by the clerk in vacation are approved; and in no case shall the finding of the Chairman of the Board of County Commissioners be final. In all cases where hearings are had by the Chairman of the Board of County Commissioners, the proceedings must be examined and certified and approved or rejected by the Judge of the District Court. [*Act approved March 8th, 1897, § 7.*] (*5th Sess. 164-5.*)

1147. *Maintenance of insane person.*—Whenever a hearing for examination or committal is had before the judge or Chairman of the Board of County Commissioners, and the person is adjudged to be insane and ordered confined in the insane asylum, it shall be the duty of the judge or person before whom the hearing is had to take evidence as to the financial worth of said insane person, which evidence shall be reduced to writing and filed as provided in the preceding section, and if it appear from said evidence that said insane person has any means, money or property out of which the expenses of his maintenance in the insane asylum, or any part thereof could be paid, it shall be the duty of the judge or person before whom hearing is had, to issue a citation to the parties in possession of his property, and to the relatives of said insane person, if any there be in the county where said insane person resided, citing them to appear and show cause why a guardian should not be appointed for said insane person, and why said guardian should not be ordered to pay the costs of the maintenance of said insane person, or so much thereof as his means will permit, which citation shall be served and all proceedings thereunder conducted as provided in Chapter 12 of Title XII of the Code of Civil Procedure; and if it appear to the court that said insane person has property that can be applied towards his maintenance, it shall be the duty of the court to make an order to that effect, stating how much of the said insane person's property shall be applied the amount to be fixed with due regard to the proper preservation of the estate of said insane person. [*Act approved March 8th, 1897, § 8.*] (*5th Sess. 165.*)

CHAPTER II.

DEAF, DUMB AND BLIND.

ARTICLE I. DEAF, DUMB AND BLIND ASYLUM.

II. MONTANA SCHOOL FOR THE DEAF AND BLIND.

III. MAINTENANCE OF DEAF AND DUMB ASYLUM.

IV. DEAF AND DUMB ASYLUM BONDS.

ARTICLE I.

DEAF, DUMB AND BLIND ASYLUM.

Section 1148. Deaf, dumb and blind asylum established.

“ 1149. *Board of commissioners, who compose.*

“ 1150. *Board must contract for care and maintenance.*

“ 1151. *Time allowed for education may be extended.*

“ 1152. *Expense must be paid out of state treasury.*

“ 1153. *Report must be made biennially.*

“ 1154. *Feeble minded and imbecile children included.*

1148. (§ 2320.) *Deaf, dumb and blind asylum established.*—The deaf, dumb and blind asylum is hereby established and located at Boulder, and has for its object the education of the deaf, dumb, and blind, and until its management and control are provided by law, the care of such persons is prescribed by this chapter.

1149. (§ 2321.) *Board of commissioners, who compose.*—The governor, secretary of state, and attorney general constitute a state board of commissioners for the deaf, dumb and blind, of which board the governor is president and the secretary of state is secretary.

1150. (§ 2322.) *Board must contract for care and maintenance.*—It is the duty of such board and they are hereby authorized to contract with any institution in the United States for the education of any deaf mute, or blind child between the ages of eight and eighteen years, who is a resident of the state, and whose parents or guardian have no means to educate such child, at the expense of the state for a term of six years if necessary and at an expense not exceeding three hundred dollars per annum.

1151. (§ 2323.) *Time allowed for education may be extended.*—If in the judgment of the board a child so provided for has ability to make use of such education, the time may be extended as may be advisable to the board.

1152. (§ 2324.) *Expense must be paid out of state treasury.*—The expense of such education, as well as the traveling expenses to and from such institution and necessary clothing for such child, must be paid out of the treasury of the state quarterly, or at such times as are necessary under the contract.

1153. (§ 2325.) *Report must be made biennially.*—The board must report biennially to each legislative assembly the number, name, and place of residence of each child mentioned in this chapter, the institution attended and the amount of money paid for the same.

1154. (§ 2326.) *Feeble minded and imbecile children included.*—The provisions of this chapter extend to and include feeble minded and imbecile children between the ages named.

ARTICLE II.

MONTANA SCHOOL FOR THE DEAF AND BLIND.

Section 1155. Name of school.

- “ 1156. *Change of name not to work forfeiture of grants.*
- “ 1157. *Objects of school.*
- “ 1158. *Control. Appointment of trustees.*
- “ 1159. *Meetings of trustees. Officers.*
- “ 1160. *Duty of board.*
- “ 1161. *Oath of trustees.*
- “ 1162. *Records.*
- “ 1163. *Compensation of trustees and secretary.*
- “ 1164. *Superintendent. Qualifications.*
- “ 1165. *Superintendent. Powers and duties.*
- “ 1166. *Exemption of employees of schools.*
- “ 1167. *Officers not to be interested in contracts.*
- “ 1168. *Regulations concerning admission to school.*
- “ 1169. *Admission of non-residents.*
- “ 1170. *Provisions for pauper inmates.*
- “ 1171. *Admission of feeble-minded persons.*
- “ 1172. *School district clerks to report pupils eligible.*
- “ 1173. *Education of deaf and blind compulsory.*
- “ 1174. *Same. Penalty.*
- “ 1175. *Duty of school district clerks.*
- “ 1176. *Expenditure of funds.*
- “ 1177. *Powers of state board of education.*
- “ 1178. *Term of school.*
- “ 1179. *Removal of trustees.*
- “ 1180. *By-laws.*
- “ 1181. *Reports.*
- “ 1182. *Lands set apart for school.*
- “ 1183. *Deaf and dumb fund.*

1155. *Name of school.*—That the educational institution of the State of Montana located at Boulder, Montana, now named and known as the “Montana Deaf and Dumb Asylum,” shall no longer be known as the Montana Deaf and Dumb asylum but shall hereafter be known as the “Montana School for the

Deaf and Blind," and shall be named, designated and known as the "Montana School for the Deaf and Blind." [*Act February 18th, 1903, § 1.*] (8th Sess. Chap. 10.)

1156. *Change of name not to work forfeiture of grants.*—The change of name herein provided for shall not be construed to impair or work a forfeiture or alteration of any rights, grants or purposes of said institution and all laws of a special or general nature now affecting or applying to the Montana Deaf and Dumb asylum shall hereafter apply with equal force and effect to said Montana School for the Deaf and Blind. [*Act approved February 18th, 1903, § 2.*] (8th Sess. Chap. 10.)

1157. (§ 2331.) *Objects of school.*—The object of said school shall be to teach the English language to all the deaf and dumb children of the state, and to furnish all children who are debarred from the public schools by reason of deafness, dumbness, blindness or feeble-mindedness, with at least an ordinary public school education in all customary branches, and to train them into mastery of such trades as shall enable them to become independent and self-sustaining citizens.. Increased facilities shall be furnished from time to time for the more thorough and successful training of those who may show a special aptness for acquiring said trades. This provision shall apply to the female as well as the male department of said school. For the sake of economy and to the end that aforesaid trades shall be practically taught to the pupils, it shall be the duty of the board of trustees to see that all the work necessary to be done for the school, such as carpentering, printing, painting, baking, sewing and the like, shall, as soon as possible, be done by the pupils themselves, under the supervision of competent foremen or teachers, permanently or temporarily employed for that purpose. [*Act approved March 16, 1895.*]

1158. (§ 2332.) *Control. Appointment of trustees.*—The immediate control and management of said school shall be vested in a board of three trustees, to be appointed by the state board of education and to be divided into three classes, as follows: Upon the taking effect of this act three trustees shall be appointed, one of whom shall serve for the term of one year, one of whom shall serve for two years and the remaining one shall serve for three years from the date of their respective appointments; their successors respectively, shall serve a term of three years each; and in every case a trustee shall hold his office until his successor is duly appointed and qualified; *Provided*, That one member of said board shall be a resident in the town of Boulder, and the remaining members shall represent the state at large; and *provided further*, That the superintendent or any other employee of said school shall not be a trustee thereof. [*Act approved March 16, 1895.*]

1159. (§ 2333.) *Meeting of Trustees. Officers.*—The said trustees shall meet in the town of Boulder within one month from the date of their appointment for the purpose of organization. They shall elect from their members a president and secretary, whose term of office shall be biennial. Two of the trustees shall at any time constitute a quorum for the transaction of business. [Act approved March 16, 1895.]

1160. (§ 2334.) *Duty of board.*—The said board of trustees shall hold a regular stated meeting on the second Tuesday of June, and every third month thereafter, and also called meetings at the request of the superintendent or any two of their own number. At each regular meeting they shall carefully inspect the school under their charge, consult with the superintendent on all matters concerning the welfare of the school and transact all business arising by reason of the existence of said school. They shall also appoint from their own number a committee of at least two members, who shall serve in that capacity for such period as the board may designate, and whose duty it shall be to receive and examine all accounts appearing against said school for the preceding calendar month, and immediately to transmit all such as are approved to the state board of examiners for their re-examination and allowance; whereupon warrants on the state treasury shall be issued for the full payment of said accounts. To the end that said accounts may receive the necessary monthly attention, the aforesaid committee shall hold meetings on the second Tuesday of every month without necessary reference to the regular full meetings of the board of trustees. All accounts shall specify clearly the nature of the claim or service and shall be countersigned by the superintendent and the chairman of said committee. [Act approved March 16, 1895.]

1161. (§ 2335.) *Oath of trustees.*—Each trustee, before entering upon the duties of his office, shall take and subscribe an oath to support the constitution of the United States and the constitution of the state of Montana, and to faithfully discharge all the duties required of him by this act, which oath shall be filed in the office of the secretary of state. [Act approved March 16, 1895.]

1162. (§ 2336.) *Records.*—The records of the secretary of the board shall at all times be open to the inspection of the trustees, the superintendent, the state board of education and the members of the legislative assembly. [Act approved March 16, 1895.]

1163. (§ 2337.) *Compensation of trustees and secretary.*—The members of said board of trustees shall receive as compensation for their services the sum of five dollars for each day employed, and ten cents per mile actually and necessarily traveled in attending meetings; *Provided*, Said compensation shall not

exceed the total sum of one hundred and twenty-five dollars per annum for the individual trustee. The secretary of the board shall receive as compensation for extra services required of him the sum of one hundred dollars per annum, which sums shall be paid out of the state treasury. [*Act approved March 16, 1895.*]

1164. (§ 2338). *Superintendent. Qualifications.*—The said board of trustees shall have charge of the general interests of the school, and shall appoint for a term of two years at the time as superintendent a man of recognized Christian character, who shall have acquired an easy and ready use of the “sign language,” such as is commonly used by the educated deaf mutes, who shall have had at least three years’ actual experience in teaching the deaf; who shall be familiar with the method used in general instruction of defective youths, and who shall possess other qualifications necessary in their judgment to fit him for such office; *Provided*, That nothing herein shall be so construed as to prevent the trustees from removing said superintendent by two-thirds vote of the full board for incompetency, mismanagement or immorality. They shall fix the salary of said superintendent, and he shall be eligible to re-election so long as they shall deem him worthy and fitted for said office. [*Act approved March 16, 1895.*]

1165. (§ 2339.) *Superintendent. Powers and duties.*—The superintendent shall be the chief executive officer of the school and shall reside in the school or on the premises. He shall be purchasing agent for the trustees, and shall have charge under such regulations as they may prescribe, of the premises, property and pupils. He shall, with the approval and consent of the trustees, appoint and fix the compensation of the teachers and all subordinate officers and employes. He may at any time, if it seems best for the school and in the interest of harmony and good discipline, discharge any of them from service; *Provided*, That no teacher shall be discharged without the consent and approval of the trustees. All such teachers, officers and other employes of said school shall be subordinate to the superintendent, and all orders to them or complaints from them shall pass through their hands. He shall see that all teachers, officers and other employes faithfully perform their respective duties and he shall be held directly responsible to the trustees for economy, efficiency and success in all the internal work of the school. He shall, before entering upon the duties of his office, take an oath to support the constitution of the United States and the constitution of the state of Montana, and that he will discharge all the duties of his office with fidelity to the best interests of the school under his care. [*Act approved March 16, 1895.*]

1166. (§ 2340.) *Exemption of employes of school.*—All persons employed in the school, while so employed shall be exempt from serving on juries or working on roads and highways, but not from paying road tax or property tax; and the certificate of the superintendent, under the official seal of the school, shall be sufficient evidence of such employment. [Act approved March 16, 1895.]

1167. (§ 2341.) *Officers not to be interested in contracts.*—No trustee, superintendent or other officer or agent, appointed by virtue and under the provisions of this act shall have any direct or indirect interests, of personal benefit, in any contract or agreement for building, repairing, furnishing or supplying said school, and no drawbacks or secret discounts shall be given to or received by any such person on account of articles or materials furnished to or labor done for said school. [Act approved March 16, 1895.]

1168. (§ 2342.) *Regulations concerning admissions to school.*—The board of trustees, according to such rules and regulations as they may prescribe, on application shall admit into the school all deaf, dumb, blind and feeble-minded residing in the state of Montana, between the ages of six and twenty-one years, who are not unsound of mind or dangerously diseased in body, or of confirmed immorality or incapacitated for useful instruction by reason of physical disability. All pupils of said school shall be entitled to ten years of attendance at said school, and upon special petition to the board by any pupil who has completed the course of ten years, which petition is approved by the superintendent, said pupil shall be allowed two additional years in the school; *Provided*, That said grant of two additional years shall be conditioned upon the previous record of the petitioner as a pupil and as a moral character in the school, which record shall be considered by the board, who shall then judge as to the justice and utility of granting any extension of time to said petitioner; *and provided further*, That nothing in this section shall be so constructed as to prevent suspension or expulsion of any pupil for insubordination or other good and sufficient cause. [Act approved March 16, 1895.]

1169. (§ 2343.) *Admission of non-residents.*—Deaf and blind persons, not resident in the state of Montana, may be admitted into the privileges and advantages of the school, subject to all the personal qualifications prescribed in § 1168 (2342) of this act, and not until the payment in advance of a sum of money, the amount of which shall be determined by careful estimate of the whole per capita cost of maintaining said school during the year immediately preceding the date of application by said non-resident persons; *Provided*, That no non-resident deaf or blind person shall be admitted to the exclusion or detri-

ment of any resident deaf or blind person. [*Act approved March 16, 1895.*]

1170. (§ 2344.) *Provisions for pauper inmates.*—In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides upon application of any relative or friend, or of any officer of the county where said person resides, shall if he deem the person a proper subject, make an order to that effect, which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county, and upon his rendering his proper accounts therefor quarter-annually, the county commissioners shall allow and pay the same out of the county treasury. [*Act approved March 16, 1895.*]

1171. (§ 2346.) *Admission of feeble-minded persons.*—All feeble-minded persons, resident in the state of Montana and qualified after the general manner prescribed in § 1168 (2342) of this act, shall be admitted into this school; *Provided*, That every such person shall be capable, in the judgment of the trustees, of at least some mental, moral or physical training, such as falls within the proper function of a school, as distinct from an asylum. To the end that the board of trustees may arrive at some definite method of judging such cases, they are hereby empowered to ascertain and establish certain tests, which tests shall be thoroughly and impartially applied to each case before final admission into the school, and it shall be the object of said tests to ascertain in each case if there be any capacity for mental, moral or physical training; *and provided further*, That as soon as possible in the judgment of the board of trustees, by and with the consent of the state board of education, a separate building and premises, adjoining yet distinct from those of the deaf and blind, shall be provided for such feeble-minded persons, which building and premises shall be more especially adapted to the peculiar needs of said feeble-minded class of persons. The said feeble-minded department shall be under the general control and supervision of said board of trustees and superintendent; but the trustees, after consultation with the superintendent and at his request, may appoint an assistant superintendent, together with specially trained teachers and attendants, whenever in their judgment said feeble-minded department herein provided for shall seem to need such additional attention and supervision. [*Act approved March 16, 1895.*]

1172. *School district clerks to report pupils eligible.*—The School district clerks of each county in this State shall annually report to the county superintendent of schools on or before the 20th day of September the names, ages and post office addresses,

and the names of parents and guardians, of every deaf or blind or feeble minded person, between the ages of Five (5) and Twenty One (21) years, residing in said school district, including all who are too deaf or too blind to obtain an education in the public schools; and any District Clerk failing to furnish such list within the time specified herein shall be guilty of a misdemeanor and shall be liable to a fine of not less than Five (\$5.00), nor more than (\$25.00) for each offense. The County Superintendent of Schools shall on or before the first (1st) day of October of each year, send a complete list of the names, ages and addresses of all such persons in their county to the superintendent of the School for the Deaf and Blind, Boulder, Montana. [*Act approved February 24th, 1903.*] (8th Sess. Chap. 25.)

1173. *Education of deaf and blind compulsory.*—Whereas: The state has provided an institution for the free instruction of all resident deaf and blind children of lawful school age, every parent, guardian or person having control or custody of any child or children, who is or are too deaf or too blind to be educated in the public schools, shall be required under the penalties hereafter specified, to send such child or children, who are of lawful school age, to said institution for the Deaf and Blind for six (6) months of each school year for the period of eight (8) years, unless such child or children be taught in a private school, at home, or in similar institution in another state, in such branches as are taught in said institution, or unless such child or children be excused by the authorities on account of his, her or their physical or mental disability; provided, that such child or children shall be required to attend such private school or institution, as hereinbefore provided not less than six (6) months of each year for eight (8) years or until he, she or they have arrived at the limit of the lawful school age. [*Act February 18th, 1903, § 1.*] (8th Sess. Chap. 9.)

1174. *Same. Penalty.*—Any parent, guardian or other person having control, charge or custody of any deaf or blind child or children failing to comply with the provisions of this act shall be liable to a fine of not less than Five (\$5.00) Dollars, nor more than Twenty-Five (\$25.00) for the first offense nor less than Twenty-Five (\$25.00) Dollars nor more than Fifty (\$50.00) for each subsequent offense, besides the cost of prosecution. [*Act approved February 18th, 1903, § 2.*] (8th Sess. Chap. 9.)

1175. *Duty of school district clerk.*—It shall be the duty of the clerk of the school district to make diligent efforts to see that this law is enforced in their respective districts. [*Act approved February 18th, 1903, § 3.*] (8th Sess. Chap. 9.)

1176. (§ 2347.) *Expenditure of funds.*—No moneys belonging to the deaf and dumb fund created by §§ 1182 (2353) and 1183 (2354) of this article, shall be otherwise expended than for

the deaf and dumb department alone of this school; and no moneys belonging to any fund which may be hereafter created especially for the blind or the feeble-minded department of this school shall be otherwise expended than for such department alone as is expressly designated in the act or acts creating said fund or funds. [*Act approved March 16, 1895.*]

1177. (§ 2348.) *Powers of state board of education.*—The state board of education shall have power to receive, hold, manage and dispose of any and all real and personal property made over to them by purchase, gift, devise, bequest or otherwise, the proceeds and interests thereof for the use and benefit of the school. [*Act approved March 16, 1895.*]

1178. (§ 2349.) *Term of school.*—The regular term of school shall begin on the second Wednesday of September in each year and close on the second Wednesday of June following. [*Act approved March 16, 1895.*]

1179. (§ 2350.) *Removal of trustee.*—The state board of education shall have power to remove any trustee for inexcusable and repeated absence from meetings, or gross neglect of the duties prescribed in this act, or other good and sufficient reasons, and every such vacancy occurring by death, removal or otherwise, shall be filled in the manner prescribed in § 1158 (2332) of this act. [*Act approved March 16, 1895.*]

1180. (§ 2351.) *By-laws.*—The board of trustees herein provided for shall, as soon as possible after their organization, and with the aid and advice of the superintendent, whom they shall have elected, formulate a set of by-laws for the wise regulation and government of the school, which by-laws shall be submitted to the state board of education for their approval and ratification. Said by-laws shall then be firmly and impartially enforced in the school, and any failure to comply with said by-laws shall submit the offender to a loss of employment or of the privileges and advantages of said school, at the option of the superintendent in consultation with the trustees. [*Act approved March 16, 1895.*]

1181. (§ 2352.) *Reports.*—On or before the first day of December, 1895, and annually thereafter, a report shall be made to the state board of education, which report shall include reports from the superintendent, the president of the board of trustees, and the visiting physician, and shall give complete and full information as follows, to-wit:

1. The amount of moneys received and expended since the last report in detail.

2. The estimated value of real estate and buildings, and the cost of all improvements, if any, made since the last report.

3. The number of pupils at any time in attendance since last report, with names, ages and addresses, cause of deafness, etc.

4. Health of the school, its sanitay condition, and any deaths or illness, if any, since the last report.

5. The number of teachers, officers and employes in employment since the last report, with names, salaries, etc.

6. All recommendations that may be deemed needful, and all other useful information touching any points of interest connected with said school at the time this report is made shall be set forth therein. [*Act approved March 16, 1895.*]

1182. (§ 2353.) *Lands set apart for school.*—The lands heretofore granted by the government of the United States to the state of Montana, for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use in perpetuity of said school, and all funds arising from the sale or leasing of said lands or any part or portion thereof, shall be sacredly applied to the proper use and benefit thereof, and all donations, gifts, devises or grants, which shall hereafter be made by any person or corporation to said school, shall rest in the state of Montana for the use and benefit thereof. [*Act approved March 1, 1893.*]

1183. (§ 2354.) *Deaf and dumb fund.*—There is hereby created a fund to be known as the “deaf and dumb fund,” in which all moneys for the use of said school shall be kept by the state treasurer. [*Act approved March 1, 1893.*]

ARTICLE III.

MAINTENANCE OF DEAF AND DUMB ASYLUM.

Section 1184. Name of asylum.

“ 1185. *State Board of education controls.*

“ 1186. *Members of board not to be interested in contracts.*

“ 1187. *Compensation. Records. Bonds.*

“ 1188. *Plans for buildings.*

“ 1189. *Advertisements of contracts.*

“ 1190. *Architect. Compensation.*

“ 1191. *Materials of construction.*

“ 1192. *Auditing and payment of accounts. Warrants.*

“ 1193. *Deaf and dumb asylum building fund.*

“ 1194. *Payment of warrants.*

“ 1195. *Appropriation.*

1184. (§ 2360.) *Name of asylum.*—That the name of the state deaf and dumb school be and hereby is changed to and it shall hereafter be known as the state deaf and dumb asylum. [*Act approved March 16, 1895.*]

1185. (§ 2361.) *State board of education controls.*—That for the purpose of maintaining the state deaf and dumb asylum of

Montana, and erecting suitable buildings for the use and accommodation thereof, the state board of education is hereby constituted a board for the general control and supervision of the deaf and dumb asylum and the construction of necessary buildings for the use thereof and authorized to prescribe all necessary rules, and make, enter into and cause to be executed all contracts which may be necessary or expedient for the execution of the provisions of this act, and the said state board of education may delegate unto the executive board provided for in § 11 of an act to create an asylum for the deaf and dumb and providing for the location thereof, and also providing for the education and maintenance of the blind and feeble-minded therein, approved March 1, 1893, such supervisory power as may be deemed necessary and proper in connection with the execution of the provisions of this act. [*Act approved March 16, 1895.*]

1186. (§ 2362.) *Members of board not to be interested in contracts.*—It shall be unlawful for any member of said board of education or of the said executive board, either directly or indirectly, to be connected in any manner whatsoever with any contract or part thereof, for the erection of any building or buildings or the supplying of any material used in or connected with the erection of any building or buildings for the said deaf and dumb asylum, or any branch or department thereof, or to receive any pecuniary benefit or promise of benefit therefrom, whether by way of commission, rebate, bonus, division of profits or otherwise, and any one of the members of either of the said boards who shall violate this provision of this act, shall be guilty of a felony and on conviction thereof, shall be subject to a fine not exceeding one thousand dollars and imprisonment in the penitentiary not exceeding five years, and shall forfeit his right to and be removed from his place in said board. It shall be unlawful for said board to employ any person in the supervision or superintendence of the building of said deaf and dumb asylum or the extension of any existing building or of any structure connected with said asylum, or the furnishing of any material therefor or any work connected therewith or may be or shall become in any manner connected, directly or indirectly, with any contract for the erection of said deaf and dumb asylum, building or buildings or for the furnishing of any supplies or material therefor, and the said board of managers are hereby charged with the rigid enforcement of this provision. [*Act approved March 16, 1895.*]

1187. (§ 2363.) *Compensation. Records. Bonds.*—That no member of either of said boards shall receive, directly or indirectly, any other compensation than that now provided by law for the discharge of their respective duties in connection with the execution of the provisions of this act. Said board shall cause

to be kept a complete and accurate record of all contracts entered into, all materials furnished, all moneys received and disbursed, all warrants or other evidence of indebtedness issued by authority thereof, and shall likewise take vouchers in duplicate for all disbursements made of any kind, character or description, one of which said vouchers shall be retained by the board as a part of its official records and the other thereof shall be filed with the state board of examiners to be by it preserved as a part of the official records of its office. Each of said boards shall keep true and complete records of all its proceedings and each and every detail of business transacted in connection with the execution of the provisions of this act, and said board shall, on the first day of December of each year prepare a financial report for the year immediately preceding, containing an itemized and classified statement of all expenditures and a list of all evidences of indebtedness issued and all vouchers filed, showing to whom and for what purpose such evidences of indebtedness were issued and for what purpose such vouchers were received, which report shall be filed in the office of the state board of examiners and published on the first day of January of each year in two newspapers to be selected by the board and a copy of said statement shall be by the board transmitted to the legislature at its next regular session. On receipt of said statement, it shall be the duty of the state board of examiners to critically examine the same together with all books, records, and files connected with and relating to the actions of said board in relation to said deaf and dumb asylum, and to set forth in his official report a detailed statement of his findings. All contracts made in connection with the construction of said deaf and dumb asylum or any addition thereto or any building connected therewith, and all bonds required by law or any rule of said board to be executed by any contractor or other person, shall be regularly passed upon by said state board of education in session and if adopted and approved by a majority of said board, shall be recorded in a book kept for that purpose and a copy of said contract shall be made out and certified by the secretary, endorsed "approved" with the date of approval and delivered to the other party to the contract. Until such delivery, no contract shall be valid or binding on either party. No party required by law or by said board to give bond, shall receive any money from the public treasury or custody of any property or other valuable thing or warrant, or certificate therefor until said bond shall have been recorded as herein required. All such bonds and contracts upon being recorded shall be filed in the office of the secretary of state, by whom they shall be preserved. Copies of all other vouchers, statements, files and papers relating to the erection of said building or buildings shall be kept by the secretary of said board of education and the originals or

duplicates when made shall be filed in the office of the secretary of state and be by him preserved. [*Act approved March 16, 1895.*]

1188. (§ 2364.) *Plans for buildings.*—In order to procure the submission of worthy and adequate plans for any building or buildings to be erected for said deaf and dumb asylum, said state board of education may offer an award to the architect submitting plans which said board may deem meritorious, such prizes as in the judgment of the said state board of education may be deemed adequate to secure the submission of plans by architects of good professional skill, provided that such prizes shall not in the aggregate exceed the sum of five hundred dollars. [*Act approved March 16, 1895.*]

1189. (§ 2365.) *Advertisements of contracts.*—No construction or material shall be made or furnished except pursuant to bids advertised for as herein provided. All lettings of construction or material exceeding in amount the sum of five hundred dollars, shall be advertised in one daily newspaper for not less than ten days and in one weekly newspaper for not less than two consecutive weeks, said papers to be of general circulation and published within the state of Montana. The offer of the lowest responsible bidder shall be accepted, save the board shall have the right to reject all bids. The performance of every contract shall be secured by a bond to the State of Montana, in a sum equal to not less than one-half of the contract price, secured by at least two sureties, qualifying in double the amount of the bond, each of whom shall be a bona fide resident of the state of Montana, said bond to be conditioned for the faithful performance of such contract. Each bid shall be accompanied by a similar bond, conditioned for the faithful execution and performance of the contract, in accordance with the plans and specifications and the terms of said bid, if the same shall be accepted by the board. All contracts shall reserve the right of the board for good cause shown to annul the contract without allowance for damages, allowing all expenses incurred and labor performed, not exceeding the contract prices, and the proportion that the work done and the material furnished thereunder bears to the amount contracted for. Such a per centum, not less than twenty per centum, as the board shall deem proper shall be reserved from payments on the monthly estimates of the work done, until such work shall have been completed, inspected, and accepted as done and performed in strict compliance with the terms of the contract. All materials contracted for shall be of the best quality and when presented shall be subject to inspection by said board, or any agent employed by said board, designated for that purpose, and the board or its agent or employe aforesaid may reject such material or any part thereof, if found to be unsatisfactory or not in conformity with plans, specifications and contract requirements. [*Act approved March 16, 1895.*]

1190. (§ 2366.) *Architect. Compensation.*—Said board of education may select an architect or other competent person to supervise construction and the execution of contracts, and said architects so chosen shall receive such compensation for his services and any design or plan he may furnish as the state board of education shall deem reasonable, and said board may prescribe all needful rules and regulations and enter into such contracts with said architects as may seem necessary in and about the execution of the contracts and the supervision of the work of construction thereunder. Neither said architect or any person participating in or connected with the drawing of plans, or the supervision of the work of furnishing material or erecting buildings for and in behalf of the state, shall be in any manner, directly or indirectly, concerned in or connected in a pecuniary way with the furnishing of any material or the execution of any contract or any part thereof, in or about said work of construction. [*Act approved March 16, 1895.*]

1191. (§ 2367.) *Materials of construction.*—All materials to be used in the construction and furnishing of said building or buildings, shall be procured in the state of Montana, provided the same are the products of said state, and can be procured in said state as cheaply as material of like quality in other localities. and said board shall not contract for or incur any obligation in any manner for material or construction in excess of the amount appropriated. [*Act approved March 16, 1895.*]

1192. (2368.) *Auditing and payment of accounts. Warrants.*—All disbursements on account of the construction of said deaf and dumb asylum building or buildings shall be made pursuant to certificates issued by the board. All claims, bills and demands for labor performed, work done or material furnished, shall be presented to the board in duplicate, and passed upon by said board only at regular sessions thereof, and after a careful examination of every item named. If found correct, they shall audit the same, preserving one duplicate and transmitting the other as audited and allowed to the state board of examiners, and shall issue a certificate to the effect that services have been rendered or material furnished and that the person therein named is entitled to a warrant for the amount therein named. Upon presentation of said certificate and the duplicate vouchers therefor as audited and approved by the board as herein provided, to the state board of examiners, the state auditor shall by direction of said board draw his warrant on the deaf and dumb asylum building fund hereinafter provided for, for the amount stated and to the order of the person named in said certificate; *Provided*, That no certificate shall be issued in excess of the amount appropriated for that year and all certificates issued shall be recorded in a book kept for that purpose. The said board of exam-

iners in lieu of paying for the said contract obligations in warrants as above specified, may authorize and empower the state auditor to draw warrants on said deaf and dumb asylum fund in such denominations as said board shall deem advisable, not exceeding in the aggregate the sum hereinafter appropriated; and advertise the same for sale in such manner and for such time and in such places as said board shall decide to be best, and at the appointed time shall sell the same to the highest bidder for cash; *Provided*, That no warrants shall be sold for less than par; and the money derived from such sale shall be paid into the said deaf and dumb asylum fund and be used to pay for the erection of said buildings. [*Act approved March 16, 1895.*]

1193. (§ 2369.) *Deaf and dumb asylum building fund.*—In order to carry out the provisions of this act there is hereby created a certain fund, to be known as the “deaf and dumb asylum building fund,” into which said fund the state treasurer shall forthwith transfer all moneys now in his hands, heretofore received from the sale, rental or other disposition of lands granted by the United States to the state of Montana for the establishment and maintenance of a deaf and dumb asylum, by the terms of an act of congress, entitled, “An act to provide for the division of South Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on equal footing with the original states, and to make donations of public lands to said states,” approved Feb. 22, 1889, and said state treasurer shall deposit to the credit of said fund all moneys hereafter received by him for the sale, rental or other disposition made of said lands so as aforesaid granted for the deaf and dumb asylum by said act of congress and no part or portion of the proceeds of such sale, rental or other disposition of said lands shall be deposited or transferred to the credit of any other fund than said deaf and dumb asylum building fund. [*Act approved March 16, 1895.*]

1194. (§ 2370.) *Payment of warrants.*—That said state treasurer shall, when there are funds sufficient in said deaf and dumb asylum building fund, pay in cash on presentation warrants drawn against said fund by the auditor of state as hereinbefore provided. In case there is no money in said fund wherewith to pay a warrant on presentation, he shall register the same as of the date of presentation, and after the date of such registration, such warrant or warrants shall draw interest at the rate of seven per cent. per annum until paid; *Provided*, That when money accumulates in said fund to the extent of five hundred dollars or more while registered warrants are outstanding, it shall be the duty of said treasurer to immediately call in, and pay, in the order of their registration, such outstanding warrants with accumulated

interest thereon, to the full extent that the money in said fund will enable him to pay; *Provided*, That after five years from the approval of this act, said outstanding warrants and interest thereon, shall be accepted in payment for land granted by the United States, to the state of Montana for the establishment and maintenance of the Montana state deaf and dumb asylum under the aforesaid act to the extent of one hundred and sixty acres and no more, to each actual settler who may present such warrants in payment for said land, not exceeding one hundred and sixty acres, to the extent of the warrants presented by such person and accumulated interest thereon. When such warrants shall have been presented and received in payment for said lands, the same shall be marked "paid," and cancelled on application for purchase of land, and appropriate other entries shall be made on the book kept for that purpose, indicating the disposition made of the warrant, which said warrant when so received shall be cancelled. [*Act approved March 16, 1895.*]

1195. (§ 2371.) *Appropriations.*—For the purposes aforesaid there is hereby appropriated out of said deaf and dumb asylum fund, the sum of fifty thousand dollars; *Provided*, That said appropriation shall be paid only out of said deaf and dumb asylum fund; *and provided further*, That the warrants issued against said fund and interest thereon shall not be deemed a charge against the state of Montana, or against any other fund than that arising from the sale of said lands granted for the establishment and maintenance of a deaf and dumb asylum as aforesaid, which said deaf and dumb asylum building fund so created, and all moneys which may pass to the credit of the same by, through or on account of the sale, rental or other disposition of said granted lands, is hereby dedicated to the redemption of all warrants issued in conformity to the terms of this act, and that all interest which may accumulate thereon; *and provided further*, That interest shall cease on any warrant within thirty days after the same shall have been called for payment by the state treasurer. [*Act approved March 16, 1895.*]

ARTICLE IV.

DEAF AND DUMB ASYLUM BONDS.

- Section 1196. Bonds to redeem outstanding warrants.*
" 1197. *Sale of bonds.*
" 1198. *Interest and sinking fund created.*
" 1199. *Investment of sinking fund.*
" 1200. *Reimbursement of general fund.*
" 1201. *State Treasurer custodian of fund.*
" 1202. *Disposition of proceeds of bonds.*

Section 1203. Call of bonds when due.

“ 1204. *Cost of issuance, how paid.*

“ 1205. *Warrant in payment of interest.*

“ 1206. *State liable only to extent of lien on lands.*

1196. *Bonds to redeem outstanding warrants.*—The state board of education and the state board of land commissioners of the State of Montana are hereby authorized to issue and dispose of bonds for the purpose of providing for the payment of all outstanding Deaf and Dumb Asylum Building Warrants, to complete the building now in course of construction at the town of Boulder, County of Jefferson, State of Montana, and to erect certain improvements on the grounds of said Deaf and Dumb Asylum at said place, under the following conditions and restrictions, to-wit:

First: The aggregate amount of bonds authorized by this act shall not exceed the sum of sixty-five thousand dollars.

Second: The denomination of each bond shall be one hundred dollars, or any multiple thereof, but the maximum amount of any bond shall not exceed the sum of one thousand dollars.

Third: The terms of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date at the option of the issuers.

Fourth: The bonds may bear any rate of interest not in excess of six per centum per annum and the interest may be payable semi-annually.

Fifth. The principal and interest shall be payable at such place and in such manner as is designated in the bond.

Sixth. The State Board of Education and the State Board of Land Commissioners shall prescribe the form of the bonds. The bonds shall bear upon their face the words “Deaf and Dumb Asylum Bond of the State of Montana,” and they shall be signed by the members of the State Board of Education and the State Board of Land Commissioners and shall be countersigned by the Secretary and Treasurer of the State, and the seal of the State shall be affixed to each bond and the bonds shall be registered in the office of the State Treasurer.

Seventh: The coupons representing the interest on the bonds shall be signed by the State Treasurer, or an engraved or lithographic fac-simile of the signature of the Treasurer may be affixed thereto, *provided*, it is so authorized in the bond. [*Act approved March 4th, 1897, § 1. (5th Sess. 94-5.)*]

1197. *Sale of bonds.*—The bonds provided for in this Act shall be disposed of by the State Board of Education and the State Board of Land Commissioners, in such manner as they shall deem it for the best interests of the State, *provided*, that no bond shall be disposed of for less than its par value. [*Act approved March 4th, 1897, § 2. (5th Sess. 95.)*]

1198. *Interest and sinking fund created.*—To provide for the payment of the principal and interest of the bonds authorized by this Act, there is hereby created a special fund to be known as "The Deaf and Dumb Asylum Interest and Sinking Fund," into which shall be paid all sums of money realized from sales of lands, licenses to cut trees, leasing of lands, profits of any and all other sources by reason of the grants of lands by Congress to the State of Montana for the establishment of a Deaf and Dumb Asylum, as provided by Sections 12 and 17 of an Act of the United States Congress entitled "An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the Union on an equal footing with the original states and to make donations of public lands to such states," approved February 22, 1889, and from said Deaf and Dumb Asylum interest and sinking fund there shall as the same becomes due and payable, be paid the interest on the said bonds; and it is further provided that it is the duty of the State Board of Land Commissioners whenever there are any funds in the said "Deaf and Dumb Asylum interest and sinking fund," over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on said bonds, to invest such excess funds in the manner set forth and provided in section 1199 (*1*) of this Act, and the amount so invested shall constitute a permanent fund, to pay the principal of said bonds; but all interest or profit derived from the investment shall be paid into the said "Deaf and Dumb Asylum Interest and Sinking Fund" and the principal and interest of the said bonds shall be a first lien upon said funds, and all lands granted and belonging to the State, for the establishment of a Deaf and Dumb Asylum. [*Act approved March 4th, 1897, § 3. (5th Sess. 95-6.)*]

1199. *Investment of sinking fund.*—The State Board of Land Commissioners are hereby authorized and directed to create a permanent fund for the payment of the principal of the bonds authorized by this Act, from the following revenues, to-wit:

Whenever the revenues of any year are sufficient to pay the interest on said bonds and there shall be an excess thereof the sum of twenty-five hundred dollars, then any and all funds over and above the said sum of twenty-five hundred dollars shall be invested for the benefit of the "Deaf and Dumb Asylum Interest and Sinking Fund" as follows, to-wit:

First. In the bonds authorized by this Act, provided they can be purchased at a cost not exceeding their par value and accrued interest.

Second. In any legally issued bonds of any county, school district, city or town of the State of Montana, provided, they can

be purchased at a cost not exceeding their par value and accrued interest; and the said State Board of Land Commissioners are hereby granted discretionary power in the selection and purchase of the securities hereinbefore described, as to the amount of each they shall purchase and conditions of general credit affecting the same. [*Act approved March 4th, 1897, § 4.*] (5th Sess. 96.)

1200. *Reimbursement of general fund.*—It is hereby provided and set forth that in the event the State of Montana shall at any time provide and pay the interest or any part thereof on the bonds authorized by this Act, from the general fund of the state, or by any special appropriation made or tax levied therefor, then for any and all interest so paid, the State shall be reimbursed from the said “Deaf and Dumb Asylum Interest and Sinking Fund” by the payment of the amount so paid or due, whenever there is sufficient money in said “Deaf and Dumb Asylum Interest and Sinking Fund to pay the same. [*Act approved March 4th, 1897, § 5.*] (5th Sess. 96.)

1201. *State Treasurer custodian of fund.*—The State Treasurer is hereby designated as the custodian of the funds provided by this Act, and he shall pay all warrants properly drawn by the State Board of Examiners save and excepting as to the interest on the bonds, which he shall pay as the same becomes due and charge the amount thereof to the “Deaf and Dumb Asylum Interest and Sinking Fund” hereinbefore created. [*Act approved March 4th, 1897, § 6.*] (5th Sess. 96.)

1202. *Disposition of proceeds of bonds.*—The moneys received from the sale of the bonds authorized by this Act, shall be paid to the State Treasurer and shall constitute a special fund for the following purposes:

First: Fifty thousand dollars thereof or so much as may be necessary to redeem and pay all legal and outstanding warrants drawn on the “Deaf and Dumb Asylum Building Fund,” with accrued interest, and to complete and furnish the Deaf and Dumb Asylum Building at Boulder, Montana, in accordance with the plans and specifications of the existing contracts.

Second: Thirteen thousand dollars (\$13,000.00) thereof, or so much as may be necessary to erect and furnish a suitable and separate building on the grounds of the Deaf and Dumb Asylum at Boulder, Montana for the temporary use and care of the feeble-minded.

Third: Two thousand dollars (\$2,000.00) thereof, or so much as may be necessary to grade, fence and otherwise improve the grounds of the Deaf and Dumb Asylum at Boulder, Montana. In making contracts for the erection of said buildings and in making payments therefor, and in all things pertaining thereto, the provisions of Article III, Sections 1185 (2361) to 1194 (2370) of

the Political Code of Montana inclusive, shall control so far as practicable. The local board of trustees with the approval of the State Board of Examiners are authorized and empowered to change the amounts above mentioned in such manner as shall best meet the purposes of this Act. [*Act approved March 4th, 1897, § 7.*] (5th Sess. 97.)

1203. *Call of bonds when due.*—Whenever any of the bonds authorized by this Act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and paid in the order of their issuance beginning with the lowest number. [*Act approved March 4th, 1897, § 8.*] (5th Sess. 97.)

1204. *Cost of issuance, how paid.*—The cost and expense of issuing the bonds hereinbefore authorized may be paid out of the proceeds thereof, or be chargeable to the expense of the construction of the buildings. [*Act approved March 4th, 1897, § 9.*] (5th Sess. 97.)

1205. *Warrants in payment of interest.*—In the event there shall not at any time be sufficient money in the “Deaf and Dumb Asylum Interest and Sinking Fund” to pay the interest when due, the State Board of Land Commissioners and the State Board of Examiners shall by an order entered on their minutes or record books, cause warrants to be issued on the said “Deaf and Dumb Asylum Interest and Sinking Fund” for the amount of interest due, and the warrants so issued shall be registered in the office of the Treasurer of the State, and shall bear interest at the rate of six per cent per annum, and said warrants shall be paid by the State Treasurer whenever there is sufficient money accumulated in said fund to pay the same; and by reason of the delivery of said warrants to the holders of said bonds and the surrender of the interest coupons, there shall be no default in the payment of interest. [*Act approved March 4th, 1897, § 10.*] (5th Sess. 97-8.)

1206. *State liable only to extent of lien on lands.*—Nothing in this Act shall be so construed as to in any wise hold the State of Montana liable for the payment of the bonds herein authorized or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting a Deaf and Dumb Asylum and, which lien shall not be abridged, annulled or set aside until the bonds authorized by this act shall have been fully paid, together with the interest thereon, and the Governor is hereby especially authorized and empowered to use all lawful means to enforce the provisions of this act. [*Act approved March 4th, 1897, § 11.*] (5th Sess. 98.)

CHAPTER III.

STATE LIBRARIES.

ARTICLE I. THE STATE LIBRARY.

II. STATE CIRCULATING LIBRARIES.

ARTICLE I.

THE STATE LIBRARY.

- Section 1207. What constitutes state library.*
 “ 1208. *Under control of board of trustees.*
 “ 1209. *Powers and duties of board.*
 “ 1210. *Librarian.*
 “ 1211. *Duties of librarian.*
 “ 1212. *Use of books.*
 “ 1213. *When to be returned.*
 “ 1214. *Books taken by state officers.*
 “ 1215. *Liability for injuries to books.*
 “ 1216. *Library fund.*
 “ 1217. *Library, time to be kept open.*
 “ 1218. *Salaries.*
 “ 1219. *Bond of librarian.*
 “ 1220. *Historical department.*
 “ 1221. *Expenses for freight, etc., how paid.*
 “ 1222. *Other expenses, how paid.*
 “ 1223. *Library Historical Society of Montana.*
 “ 1224. *Trustees of historical branch.*
 “ 1225. *Rules.*
 “ 1226. *Transfer of books, etc.*
 “ 1227. *Assistants to librarian of historical library.*
 “ 1228. *Law librarian to index session laws.*
 “ 1229. *Duties of the secretary of state.*
 “ 1230. *Assistants to law librarian.*

1207. (2380.) *What constitutes state library.*—The books, pamphlets, papers, maps, charts, manuscripts, paintings, engravings, and other property belonging to the state, in the Montana library, and all that may be added thereto, constitute the state library of Montana.

1208. (§ 2381.) *Under control of board of trustees.*—The state library consists of two separate departments: First, the law library; second, the historical and miscellaneous library. The former is under the control of a board of five trustees, of which the chief justice and the associate justices of the supreme court shall be ex-officio members, the secretary of state and state auditor, of which board the chief justice is president and the secretary of state secretary. The latter shall be under the control of the board of five trustees, appointed by the governor with

the advice and consent of the senate. The members of both boards shall serve without compensation, and the term of those not serving ex-officio shall be for two years and until their successors are appointed and qualified. [*Act approved March 13, 1895.*]

1209. (§ 2382.) *Powers and duties of board.*—The powers and duties of said boards are as follows:

1. To make rules and regulations, not inconsistent with law, for their own government and for the government of the libraries committed to their care.

2. Till otherwise provided, to rent suitable rooms for the libraries and provide necessary furniture, fuel and light for the same.

3. To appoint their respective librarians and prescribe their duties, not otherwise provided for.

4. To sell or exchange duplicate copies of books and pay the money arising therefrom into the library fund of the department to which it belongs.

5. To see that the books and other property of the respective departments are in order and repair.

6. To draw from the state treasury at any time when needed for legitimate and authorized expenses any moneys belonging to the fund of their respective departments.

7. To report to the governor biennially a statement of all important transactions with suggestions of what they deem necessary for the increased utility of their respective departments. [*Act approved March 13, 1895.*]

1210. (§ 2383.) *Librarian.*—The librarian holds his office for the term of two years; unless sooner removed by a majority vote of the trustees.

1211. (§ 2384.) *Duties of librarian.*—It is the duty of the librarian of each department:

1. To be in attendance at the library during office hours.

2. To purchase, under the direction of the trustees, all books, maps, engravings, paintings, furniture and supplies for the libraries.

3. To number and stamp all books, maps, papers and pamphlets belonging to the library and keep a catalogue thereof, and, as the means are provided therefor, to have the same printed and distributed, under the direction of the trustees.

4. To have bound all books, pamphlets and papers when directed thereto.

5. To keep a register of all books and property belonging to the libraries, the additions made each year and the costs thereof.

6. To keep a register of all books or other property taken from the library under the authority of the trustees.

7. To establish and maintain a system of domestic and foreign exchange of books, maps or other publications and to obtain from the secretary of state such numbers of all state publications as may be needed to supply the demands of the system established. [*Act approved March 13, 1895.*]

1212. *Use of books.*—All persons during library hours are permitted to examine the libraries and their contents. During sessions of the Legislative Assembly the members thereof may take books from the libraries and State officials may do so at any time. Law books may be taken from the library to the court room by any attorney, and returned the same day. Such books belonging to the Historical and Miscellaneous Department of the State Library, other than reference books, as could be readily replaced in case of loss, may be loaned to any citizen of the State, who shall place such guarantee with the Librarian of this Department, for the safe return of the same, as the library board may demand, and who shall pay the cost of transportation of the book or books to and from the borrower; *provided* that no book that could not be readily replaced in case of loss shall be removed from said Library except by State Officials, and by them only in pursuit of their official duty. [*Act approved March 3, 1905.*] (9th Sess. Chap. 81.)

1213. (§ 2386.) *When to be returned.*—Books taken by members of the legislative assembly must be returned at the close of the session; and before the state auditor draws his warrant in favor of any member of the legislative assembly for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.

1214. (§ 2387.) *Books taken by state officers.*—The state auditor, if notified by the librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three times the value of the books, or of any injuries thereto, has been paid to the librarian.

1215. (§ 2388.) *Liability for injuries to books.*—Every person who injures or fails to return any book taken is liable to the librarian in three times the value thereof, if such book is not replaced by a new one.

1216. *Library funds.*—The fund of the law library department of the state library consists of twenty per cent of all fees collected and paid into the State Treasury by the Clerk of the Supreme Court, and any appropriations especially made for this department by the legislative assembly; if any part of said fund be not expended in any year, said balance shall not be covered back in the general fund at the end of the fiscal year, but the same shall be reserved and set apart as a surplus fund for the

purchase of books for the law library, and the board of trustees of the law library department of the State library is hereby empowered and authorized to draw from the State Treasury, at any time when needed for the purchase of additional books, any moneys belonging to said surplus fund. The fund of the historical and miscellaneous department of the state library consists of the receipts from the sale of any of its publications authorized to be sold and of any appropriations especially made in its behalf by the legislative assembly. [*Act approved February 26th, 1903.*] (*8th Sess. Chap. 31.*)

1217. (§ 2390.) *Library, time to be kept open.*—During the sessions of the legislative assembly, and of the supreme court, the library must be kept open every day from nine o'clock a. m. until nine o'clock p. m., and at other times as the trustees may direct.

1218. *Salaries.*—The annual salary of the librarian of the Law Library shall be Two Thousand Dollars, and Librarian of Historical Library Eighteen Hundred Dollars, from and after April First, 1907, payable monthly out of the general fund of the State Treasury. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 77.*)

1219. (§ 2392.) *Bond of librarian.*—The librarian must execute an official bond in the sum of one thousand dollars, to be approved by the governor and deposited with the secretary of state. [*Act approved March 13, 1895.*]

1220. (§ 2393.) *Historical department.*—In addition to the duties prescribed in the foregoing section the librarian of the historical and miscellaneous department shall, under the direction of the trustees thereof:

1. Procure by purchase, exchange or donation, as far as means and opportunity allow, all books, writings, lectures, letters, journals and narratives of pioneers, as well as autographs, photographs, maps and charts illustrative of or relating to the history of Montana as a territory or state.

2. He shall also procure specimens of the metals and minerals, of the flora and fauna of the state, together with natural curiosities and antiquities, preserving, designating and displaying the same under rules prescribed by the trustees.

3. He shall procure copies of all newspapers published in the state, also so far as possible of all books, magazines, pamphlets, written or published in the state, and have the same suitably bound for reference and preservation.

4. He shall each year publish a volume of transactions and contributions, under the supervision of the trustees, who shall also direct the distribution of the same to promote exchanges and secure additions to the library. [*Act approved March 13, 1895.*]

1221. (§ 2394.) *Expenses for freight, etc., how paid.*—The librarian of either department of the state library is authorized to pay reasonable freight, express and mail charges upon books or other articles sent to the library by the general, state or foreign governments or private parties, taking proper vouchers therefor, and upon presentation of such vouchers to the board of examiners and the allowance thereof, the same must be paid out of the state treasury from the particular library fund to which they are chargeable. [*Act approved March 13, 1895.*]

1222. (§ 2395.) *Other expenses, how paid.*—All accounts for the rent of library rooms, fuel, light and other necessities, and for the purchase and printing of books, furniture and fixtures, must be made out by the librarian and approved by the state board of examiners and paid out of the state treasury from the library fund to which they are properly chargeable. [*Act approved March 13, 1895.*]

1223. (§ 2397.) *Library Historical Society of Montana.*—Whenever the Historical Society of Montana has donated and turned over to the state, all books, papers and other property owned by such society, the board of trustees of the state library must take charge of the same and may make all proper rules in regard to the custody and management of the same.

1224. (§ 2398.) *Trustees of historical branch.*—That the books, papers and other property now in the custody of the librarian of the Historical Society of the State of Montana, or which may be added thereto, shall be under the exclusive control of a board of five trustees, who shall be nominated by the governor and confirmed by the senate, and shall serve for the term of two years and until their successors are appointed and qualify. [*Act approved March 2, 1893.*]

1225. (§ 2399.) *Rules.*—That the said board of trustees shall adopt such rules and regulations as may be necessary to discharge the duties of said historical society, which are now or may be defined by law. [*Act approved March 2, 1893.*]

1226. (§ 2400.) *Transfer of books, etc.*—That the books, papers, pamphlets, charts, maps, manuscripts, paintings, engravings, photographs and other property belonging to the state, now in the miscellaneous division of the Montana library or which shall hereafter be added to it by purchase or donation, are hereby transferred to and made a part of the library of the Historical Society of the State of Montana and shall be under the care and custody of the librarian of said society and the officers thereof. [*Act approved March 9, 1893.*]

1227. *Assistants to librarian of historical library.*—The librarian of the Historical and Miscellaneous Department is hereby authorized and empowered to engage and employ two assistant

Librarians for said Department at an annual salary as follows: The First Assistant Librarian shall receive a salary of Twelve Hundred Dollars per annum and the Second Assistant Librarian shall receive a salary of Nine Hundred Dollars per annum payable monthly out of the General Fund of the State Treasury. The Librarian of said department and each assistant shall be persons educated and experienced in Library work, and shall be of good moral character. [*Act approved March 4, 1907, § 3.*] (*10th Sess. Chap. 77.*)

1228. *Law librarian to index session laws.*—It shall be the duty of the State Law Librarian to prepare a suitable index of all the laws and resolutions passed or adopted at each session of the Legislative Assembly of Montana, after this, the Tenth Session. Such index shall be a thorough index of such laws and resolutions, and of each subject contained in or covered by such laws and resolutions, together with such cross-index as will assist in readily finding any subject or matter contained in such volume; and for the purpose of procuring and preserving uniformity in such indices, the index of each succeeding volume of the session laws shall conform, as near as practicable, with those of the volumes preceding it, prepared by said Librarian. He shall also prepare for each volume of such laws an additional index, showing what sections of the several codes of this State, and what session laws have been amended, repealed, altered or changed by any laws published in that volume, which shall be known and designated as the "Code Index," and to deliver the said indices to the Secretary of State as soon as completed. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 161.*)

1229. *Duties of the Secretary of State.*—It shall be the duty of the Secretary of State to deliver to the State Law Librarian at the earliest day practicable after the final adjournment of each session of the Legislative Assembly, correct copies of all laws and resolutions passed or adopted at such session, to be used by said Librarian in preparing such indices. The Secretary of State shall cause such indices to be published with such laws and resolutions. [*Act approved March 7, 1907, § 2.*] (*10th Sess. Chap. 161.*)

1230. *Assistants to law librarian.*—The Law Librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indices, and said assistant shall be paid out of any funds in the Law Library expense account. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 161.*)

ARTICLE II.

STATE CIRCULATING LIBRARIES.

- Section 1231. *Circulating libraries of the state of Montana.*
“ 1232. *Appropriations.*
“ 1233. *Control.*
“ 1234. *Purchase of books.*
“ 1235. *Composition of libraries.*
“ 1236. *Board may make rules.*
“ 1237. *Use of libraries.*

1231. (§ 2410.) *Circulating libraries of the state of Montana.*—The libraries hereby created shall be known as the circulating libraries of the state of Montana. [*Act approved March 19, 1895.*]

1232. (§ 2411.) *Appropriations.*—There is hereby appropriated the sum of one thousand dollars for the year 1895, and five hundred dollars for the year 1896, and three hundred dollars annually thereafter, for the purpose of purchasing books for circulating libraries for said state. [*Act approved March 19, 1895.*]

1233. (§ 2412.) *Control.*—Said libraries shall be under the control and management of a board to be composed of the superintendent of public instruction, the attorney general and state auditor of said state. [*Act approved March 19, 1895.*]

1234. (§ 2413.) *Purchase of books.*—Said board shall expend said money for the purchase of books to compose said libraries. [*Act approved March 19, 1895.*]

1235. (§ 2414.) *Composition of libraries.*—Said board shall divide said books, when purchased, into libraries of one hundred books each, each library to be composed of different books, with a suitable designation or number. [*Act approved March 19, 1895.*]

1236. (§ 2415.) *Board may make rules.*—Said board shall have the control, care and management of said libraries, and shall make such rules and regulations as it may think proper for the circulation, care and preservation of said libraries. [*Act approved March 19, 1895.*]

1237. (§ 2416.) *Use of libraries.*—Any community, village, town or city, in the order of its application therefor, may have the use of any one of said libraries at one time and for a period not exceeding six months, upon giving security for the proper return of such library, as the said board may deem proper and upon paying all expenses, freight and other charges for the shipment of such library to and from such community, village, town or city. [*Act approved March 19, 1895.*]

CHAPTER IV.

STATE CAPITOL BUILDING.

- Section 1238. State capitol building bonds.*
 “ 1239. *Sale of bonds.*
 “ 1240. *Interest and sinking fund.*
 “ 1241. *Investment of sinking fund.*
 “ 1242. *Reimbursement of general fund.*
 “ 1243. *Duty of state treasurer.*
 “ 1244. *Issuance and registry of warrants.*
 “ 1245. *Redemption of bonds.*
 “ 1246. *Cost of issuing bonds.*
 “ 1247. *Warrants in payment of interest.*

1238. *State capitol building bonds.*—The State Capitol Commission and the State Board of Land Commissioners of the State of Montana, are hereby authorized to issue and dispose of bonds for the purpose of erecting a building to be known as the “State Capitol Building” to be located in the City of Helena, Montana, under the following conditions and restrictions, to-wit:

First—The aggregate amount of bonds authorized by this Act shall not exceed the sum of Three Hundred and Fifty Thousand Dollars, (\$350,000).

Second—The denomination of each bond shall be one hundred dollars, or any multiple thereof, but the maximum amount of any bond shall not exceed the sum of One Thousand Dollars.

Third—The term of said bonds shall not exceed thirty years from their date, and they shall be payable at any time after fifteen years from their date, at the option of the issuers.

Fourth—The bonds may bear any rate of interest not in excess of six per centum per annum, and the interest may be payable semi-annually.

Fifth—The principal and interest shall be payable at such time and in such manner as is designated in the bond.

Sixth—The State Capitol Commissioners and the State Board of Land Commissioners shall prescribe the form of the bond. The bonds shall bear upon their face the words “Capitol Building Bond of the State of Montana” and they shall be signed by the members of the State Capitol Commission and the State Board of Land Commissioners, and shall be countersigned by the Secretary and Treasurer of the State, and the seal of the State shall be affixed to each bond, and the bonds shall be registered in the office of the State Treasurer.

Seventh—The coupons representing the interest on the bonds shall be signed by the State Treasurer, or an engraved or lithographic fac-simile of the signature of the Treasurer may be affixed thereto, *provided*, it is so authorized in the bond. [*Act approved March 4th, 1897, § 1.*] (5th 171-2.)

1239. *Sale of bonds.*—The bonds provided for in this Act shall be disposed of by the State Capitol Commission and the State Board of Land Commissioners, in such manner as they shall deem for the best interests of the State, *Provided* that no bond shall be disposed of for less than its par value. [Act approved March 4th, 1897, § 2.] (5th Sess. 172.)

1240. *Interest and sinking fund.*—To provide for the payment of the interest and principal of the bonds authorized by this Act, there is hereby created a special fund to be known as "The Capitol Building Interest and Sinking Fund" into which shall be paid all sums of money realized from sales of lands, licenses to cut trees, leasing of lands, profits of any and all other sources by reason of the grants of lands belonging to or authorized for the purpose of building or aiding in the building or erection of a State Capitol Building as provided by sections 12 and 17 of an Act of the United States Congress entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana and Washington to form Constitutions and State Governments, and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such states," approved February 22nd, 1889, and from said "Capitol Building Interest and Sinking Fund," there shall, as the same becomes due and payable, be paid the interest on the said bonds; and it is *further provided*, that is the duty of the "State Board of Land Commissioners," whenever there are any funds in the said "Capitol Building and Sinking Fund" over and above the sum of twenty-five hundred dollars in excess of the amount required to pay the yearly interest on said bonds, to invest such excess funds in the manner set forth and provided in section 1241 (4) of this act, and the amount so invested shall constitute a "permanent fund" to pay the principal of the said bonds; but all interest or profit derived from the investment shall be paid into the said "Capitol Building Interest and Sinking Fund" and the principal and interest of the bonds shall be a first lien upon said funds, and all lands granted and belonging to the State, for the purpose of erecting buildings at the State Capitol. [Act approved March 4th, 1897, § 3.] (5th Sess. 172-3.)

1241. *Investment of sinking fund.*—The State Board of Land Commissioners are hereby authorized and directed to create a "permanent fund" for the payment of the principal of the bonds authorized by this Act, from the following revenues, to-wit: Whenever the revenues in any year are sufficient to pay the interest on the said bonds and there shall be in excess thereof, the sum of twenty-five hundred dollars, then any and all funds over and above the said sum of twenty-five hundred dollars shall be invested for the benefit of the "Capitol Building Interest and Sinking Fund" as follows, to-wit:

First—In the bonds authorized by this Act, provided they can be purchased at a cost not exceeding their par value and accrued interest.

Second—In any legally issued bonds of any county, school district, city or town of the State of Montana, provided they can be purchased at a cost not exceeding their par value and interest.

Third—In any legally issued General Fund Warrants of the State of Montana, or any legally issued warrants of any county, city or town of the State of Montana, *provided* they can be purchased at a cost not exceeding their par value and accrued interest; and the said State Board of Land Commissioners are hereby granted discretionary power in the selection and purchase of the securities hereinbefore described, as to the amount of each they shall purchase and conditions of general credit affecting the same. [*Act approved March 4th, 1897, § 4.*] (5th Sess. 173.)

1242. *Reimbursement of general fund.*—It is hereby provided and set forth that in the event the State of Montana, shall, at any time provide and pay the interest, or any part thereof, on the bonds authorized by this Act from the general fund of the State, or by any special appropriation made or tax levied therefor, then for any and all interest so paid, the State shall be reimbursed from the said "Capitol Building Interest and Sinking Fund" by the payment of the amount so paid or due, whenever there is sufficient money in said "Capitol Building Interest and Sinking Fund" to pay the same. [*Act approved March 4th, 1897, § 5.*] (5th Sess. 173.)

1243. *Duty of state treasurer.*—The State Treasurer is hereby designated as the custodian of the funds provided by this act, and he shall pay all warrants properly drawn by the State Capitol Commission, save and excepting as to the interest on the bonds, which he shall pay as the same becomes due and charge the amount thereof to the "Capitol Building Interest and Sinking Fund" hereinbefore created. [*Act approved March 4th 1897, § 6.*] (5th Sess. 173-4.)

1244. *Issuance and register of warrants.*—All moneys received from the sale of the bonds authorized by this act shall be paid to the State Treasurer, and shall constitute a special fund for the erection of the State Capitol Building, and shall be disbursed by the State Treasurer on warrants properly drawn by the State Capitol Commission, and including all warrants heretofore drawn by the State Capitol Commission, and registered prior to the passage of this Act. [*Act approved March 4th. 1897, § 7.*] (5th Sess. 174.)

1245. *Redemption of bonds.*—Whenever any of the bonds authorized by this Act shall become due and payable, and there is sufficient funds to pay the same, they shall be called in and

paid in the order of their issuance, beginning with the lowest number. [*Act approved March 4th, 1897, § 8.*] (5th Sess. 174.)

1246. *Cost of issuing bonds.*—The cost and expense of issuing the bonds hereinbefore authorized may be paid out of the proceeds thereof, or be chargeable to the expenses of the construction of the building. [*Act approved March 4th, 1897, § 9.*] (5th Sess. 174.)

1247. *Warrants in payment of interest.*—In the event there shall not, at any time, be sufficient money in the “Capitol Building Interest and Sinking Fund” to pay the interest when due the State Board of Land Commissioners and the State Capitol Commission shall, by an order entered on their minutes or record books, cause warrants to be issued on the said “Capitol Building Interest and Sinking Fund” for the amount of interest due, and the warrants so issued shall be registered in the office of the Treasurer of the State, and shall bear interest at the rate of six per centum per annum and said warrants shall be paid by the State Treasurer whenever there is sufficient money accumulated in said fund to pay the same; and by reason of the delivery of said warrants to the holders of said bonds and the surrender of the interest coupons, there shall be no default in the payment of interest. [*Act approved March 4th, 1897, § 10.*] (5th Sess. 174.)

1248. *State liable only to extent of lien.*—Nothing in this Act shall be so construed as to in any wise hold the State of Montana liable for the payment of the bonds herein authorized, or the interest thereon, except as to the lien heretofore created against the lands and funds granted for the purpose of erecting a State Capitol Building and which lien shall not be abridged, annulled, or set aside until the bonds authorized by this Act shall have been fully paid together with the interest thereon and the Governor is hereby specially authorized and empowered to use all lawful means to enforce the provisions of this Act. [*Act approved March 4th, 1897, § 11.*] (5th Sess. 174-5.)

CHAPTER V.

STATE ORPHANS' HOME.

- Section 1249. *Establishment of home.*
 “ 1250. *Who entitled to admittance.*
 “ 1251. *Control.*
 “ 1252. *Meeting of officers of board.*
 “ 1253. *Selection of site.*
 “ 1254. *Oath.*
 “ 1255. *President of board.*
 “ 1256. *Secretary.*
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- Section 1258. Superintendent. Matron.*
 “ 1259. *Qualifications and powers of superintendent.*
 “ 1260. *Duties of matron.*
 “ 1261. *Course of study.*
 “ 1262. *Equipment of home.*
 “ 1263. *Supplies for home.*
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 “ 1265. *Training of inmates.*
 “ 1266. *Teaching to be thorough.*
 “ 1267. *Grounds, etc., for home.*
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 “ 1275. *County superintendent of schools to act as agent of Board.*
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 “ 1277. *Application for admission.*
 “ 1278. *Court may commit children on divorce of parents to the Home.*
 “ 1279. *Age limit.*
 “ 1280. *Incorrigible children.*

1249. (§ 2470.) *Establishment of home.*—There is hereby established to be located and permanently maintained at or within one mile of the town of Twin Bridges, in the county of Madison, a home for the support and care of orphans, foundlings and destitute children resident within the state of Montana. [Act approved March 2, 1893.]

1250. *Who entitled to admittance.*—Every orphan, foundling or destitute child, under twelve years of age, of sound mind and body, shall be entitled to be received into said Home at the expense of the State. Children over twelve years of age and under sixteen years of age and children with slight physical defects may be admitted to the Home, if deemed advisable by the Board of Trustees. The Board of Trustees shall have the power to return to any county and at the expense of that county any child forwarded to the Orphan's Home, provided it is ascertained that such child is not a proper subject for said institution. [Act approved February 28th, 1903, § 1.] (8th Sess. Chap. 40.)

1251. (§ 2472.) *Control.*—Said home shall be under the supervision of a board of trustees, consisting of five persons who shall be appointed by the governor; three of whom shall hold office for the term of four years, and two for the term of two

years, and until their successors are appointed and qualified.
[*Act approved March 2, 1893.*]

1252. (§ 2473.) *Meeting and officers of board.*—Said trustees shall meet at the town of Twin Bridges in said county of Madison, within one month from the date of their appointment for the purpose of organization. They shall choose one of their members to act as president, another as treasurer, and the third as secretary of the board; three of whom shall constitute a quorum for the transaction of business. [*Act approved March 2, 1893.*]

1253. (§ 2474.) *Selection of site.*—Said board of trustees shall at such meeting select a site for the purpose of erecting a suitable building for said home, or they may enter into negotiations for the purchase of a suitable building at a price not exceeding seven thousand five hundred dollars. [*Act approved March 2, 1893.*]

1254. (§ 2475.) *Oath.*—Each member of said board shall, before entering upon his or her duties, take and subscribe an oath to support the constitution of the United States, and the state of Montana, and faithfully to discharge the duties required of him or her by the provisions of this act. [*Act approved March 2, 1893.*]

1255. (§ 2476.) *President of board.*—The president shall preside over all meetings of the board when present, sign with the secretary all orders on the treasurer, and perform such other duties as may be delegated to him by the board. [*Act approved March 2, 1893.*]

1256. (§ 2477.) *Secretary.*—The secretary shall keep a correct record of all the proceedings of the board, and have charge of all papers, records and accounts for the same, except such as are needed by the treasurer and officers of the home for their immediate use for the discharge of their duties. He shall also draw and sign with the president all orders on the treasurer, and the treasurer shall keep and have in charge all funds of the home. [*Act approved March 2, 1893.*]

1257. (§ 2478.) *Treasurer. Bond.*—The treasurer shall pay on the order of the board all accounts by it allowed, and shall quarterly certify to said board the receipts and disbursements by him made during the preceding quarter. Said treasurer shall be and is hereby required to give bond to the state in the sum of ten thousand dollars with good and sufficient security for the same, to be approved by the governor and attorney general, and filed in the office of the secretary of state. [*Act approved March 2, 1893.*]

1258. (§ 2479.) *Superintendent. Matron.*—The board of trustees shall have the general supervision of the home and adopt rules for the government thereof not inconsistent with this act;

they may employ a superintendent at a salary not exceeding fifteen hundred dollars per annum, who shall have a personal superintendence of the home and grounds and perform such duties as may be assigned him by the board of trustees. They may employ a matron at a salary not exceeding six hundred dollars per annum. [*Act approved March 2, 1893.*]

1259. (§ 2480.) *Qualifications and powers of superintendent.*—The superintendent of the home shall be a person of acknowledged ability and fitness for his office, and shall sustain a good moral character. He shall have entire control of the educational, moral and dietetic treatment of the inmates and pupils, and shall see that the several employes in the institution faithfully and diligently discharge their respective duties. He shall employ such attendants, nurses, servants, and such other persons as he may deem necessary for the efficient and economical management of the institution, and assign them their respective places and duties. The superintendent and matron shall devote their entire time to the interests of the home. [*Act approved March 2, 1893.*]

1260. (§ 2481.) *Duty of matron.*—The matron, under the direction of the superintendent, and not otherwise, shall have the general supervision of the domestic arrangements of the institution, and do what she can to promote the comfort and welfare of its inmates. [*Act approved March 2, 1893.*]

1261. (§ 2482.) *Course of study.*—The trustees shall afford to all pupils under their charge such literary, technical, industrial and other education as can be made beneficial to them. The trustees shall have power to establish schools for the purpose of education, and shall also establish and maintain within the grounds of the home, shops wherein suitable trades may be taught and practiced in a thorough and comprehensive manner, and under their regulation the superintendent shall have power to employ the proper persons to teach the pupils under their charge, and to dismiss such instructors for cause. [*Act approved March 2, 1893.*]

1262. (§ 2483.) *Equipment of home.*—The trustees, and, under their regulations, the superintendent, shall have power to purchase books, material, tools, and machinery necessary to carry out the said purposes, and to dispose of the productions of the pupils to the best advantage of the institution, accounting for the proceeds and expenditures in their annual report; and the trustees may, when, in their opinion, the best interests of any inmates would be subserved thereby, secure homes for any of them in private families upon such terms as they may agree upon, reserving the right to replace such children in the home if they shall deem it for their best interests. [*Act approved March 2, 1893.*]

1263. (§ 2484.) *Supplies for home.*—The superintendent, under the direction of the board of trustees, shall procure the necessary clothing and provisions, medicines and medical attendance for the inmates of the home, and make all necessary provisions for the same, so as to fully carry into effect the object and purposes of this act and the proper maintenance of said home. [Act approved March 2, 1893.]

1264. (§ 2485.) *Contracts for supplies.*—Whenever in the opinion of the board of trustees more than one hundred dollars' worth of any one article will be needed for the use of the institutions during any one year, then it shall be the duty of the board to advertise for sealed bids to furnish at the institution such articles at such times and in such quantities as the superintendent may from time to time direct, with good and sufficient surety that such bidder, if the contract be awarded to him, will fulfill and perform the contract on his part; and all such contracts shall be awarded to the lowest bidder, but said board may reject all bids and readvertise. [Act approved March 2, 1893.]

1265. (§ 2486.) *Training of inmates.*—The curriculum of the studies of the home for those having passed the thirteenth year, shall be such as to assist them most effectually in their future pursuits. The division and assignment into schools and classes shall be so regulated that the pupils may have the benefit of instruction in approved literary branches, at such hours as would appear to be most practicable, whether given in evening schools, half-time schools, or in schools during certain seasons only. [Act approved March 2, 1893.]

1266. (§ 2387.) *Teaching to be thorough.*—Whatever branches of industry the trustees may find proper to introduce, shall be taught and practiced in such a thorough and comprehensive manner that the orphans' home shall be considered as a model school for these particular branches; and said board of trustees shall have power to make all necessary arrangements to carry into effect the purposes of this act. [Act approved March 2, 1893.]

1267. (§ 2488.) *Grounds, etc., for home.*—Said board of trustees shall also have power, and it shall be their duty, from time to time, as means shall be provided and placed at their disposal, to provide suitable grounds and buildings and make purchases or leases thereof for the use of said home. [Act approved March 2, 1893.]

1268. (§ 2489.) *Examination of accounts.*—The district judge of the county of Madison shall, at least twice each year, carefully examine and check up the accounts of the board of trustees, secretary, treasurer and superintendent of the orphans' home, and if found to be correct in every particular, he shall, on the first day of the next term thereafter, cause an order to be

entered in the records of court proceedings of his said court, to that effect. If the judge shall find that the accounts have been improperly kept, or that the funds appropriated have not been properly expended or applied, or that the home has not been managed in accordance with the provisions of this act, he shall enter such findings in the journal of his said court and shall immediately subunit to the state board of examiners a copy of his findings, who shall proceed to examine into and carefully investigate the management, expenditures and accounts of said home; and if it shall appear upon such examination that the board of trustees, or any member thereof, or any officer of the home, has embezzled or converted to his own use or has been culpably negligent in keeping the books and accounts of the home, or the care and custody of the moneys belonging to such home, or has expended the same improperly or unlawfully, and such findings are approved by the state board of examiners, they shall then certify such fact to the governor, who shall immediately remove any and all such trustees or officers of the home so offending, and shall appoint others in their places. [*Act approved March 2, 1893.*]

1269. (§ 2490.) *Report.*—The board of trustees shall, on or before the first day of December, in each year, make out and forward to the governor, a full and complete report which shall show:

1. A statement of the financial condition of the home, giving in detail the amount of moneys received from all sources and the amount expended, and for what purpose expended.

2. The value of real estate at date of report and all improvements made, if any, since last report.

3. The number of children that have entered the home, and the number of those who may have left it since last report, and to whom surrendered.

4. The number of deaths, if any, that have occurred in the home since last report, with the name, age and cause of death.

5. The progress, health and discipline of the children.

6. The number of officers, nurses and teachers employed, with the salary of each.

7. All needful information, touching every point that may be deemed of interest, to be communicated. [*Act approved March 2, 1893.*]

1270. (§ 2491.) *Funds.*—The funds and revenues for the establishment and maintenance of said home for the payment of its officers, nurses, teachers and employes, and for all purposes incident thereto, or necessary for the proper continuance and successful conduct thereof, shall be appropriated and apportioned in such manner as the legislative assembly shall by law provide. [*Act approved March 2, 1893.*]

1271. (§ 2492.) *Appropriation.*—There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum or seven thousand five hundred dollars for the purpose of purchasing a site and erecting or purchasing a suitable building for the said home, and eight thousand dollars for furnishing and carrying on the work of said home during the years 1893 and 1894; *Provided*, That said appropriations shall not be available until the site for said home shall have been selected and shall be drawn only upon the order of the board of trustees of said home. [*Act approved March 2, 1893.*]

1272. (§ 2493.) *Payment of appropriation.*—The state treasurer shall, under the order of the state board of examiners, from time to time as it may be necessary, advance to the board of trustees on its order, on a warrant from the auditor of state, a sum not exceeding the amount herein appropriated. The board of trustees shall account to the state board of examiners for all and each of said amounts so drawn before another order is approved by said board of examiners. [*Act approved March 2, 1893.*]

1273. (§ 2494.) *Penalty.*—Any trustee, superintendent, clerk, physician, or matron, who shall conceal, or convert to his or her own use, any money, or other property, belonging to said institution, or belonging to the state, or who shall cheat, or attempt to cheat, or collude with any other person to cheat or defraud such institution, or the state, in any manner whatever, shall be deemed guilty of a felony, and on conviction thereof, shall be imprisoned in the state prison, and kept at hard labor not more than ten years, nor less than one year; and any trustee, superintendent, physician, or matron, who shall be directly or indirectly interested in any contract for the purchase of any building material, or articles of furniture, supplies, provisions for the use of said institution, or for any building or improvement, shall on conviction thereof, be punished by imprisonment in the state prison at hard labor not less than one nor more than ten years. [*Act approved March 2, 1893.*]

1274. *Compensation of Board of Trustees.*—Said Board of Trustees shall receive as compensation for their services the sum of three Dollars for each day employed, and ten cents per mile, actually and necessarily traveled in attending the meetings of the Board, said compensation shall not exceed One Hundred Dollars per annum for each individual trustee. [*Act approved March 3rd, 1897.*] (5th Sess. 175.)

1275. *County Superintendent of Schools to act as agent of Board.*—The County Superintendent of Schools of each county in the State, is hereby made the agent of the Board of Trustees of the State Orphan's Home, and as such agent, it shall be his duty, under such rules and regulations as shall be prescribed by

the Board of Trustees, to see that the conditions upon which any child taken from said Orphan's Home are complied with by persons in his county who adopt or undertake with the consent of said Board of Trustees to nurture, care for, maintain or educate any such child; and he shall on the first Saturday in October in each year make a report to said Board of the condition and surroundings of all such children in his county and of all other facts relating thereto as may be required by said Board. [*Act approved February 28th, 1903, § 2.*] (8th Sess. Chap. 40.)

1276. *Record of agent.*—Such County Superintendent shall keep a record, in a book to be kept in his office, and open to public inspection, in such form as shall be prescribed by said Board of Trustees of said Orphan's Home, and of all children placed in said Orphan's Home, from the county, and of all children adopted or let out from said home, with the consent of said Board, by residents of his county. [*Act approved February 28th, 1903, § 3.*] (8th Sess. Chap. 40.)

1277. *Application for admission.*—When it is desired to place any child in said Orphan's Home, application shall first be made to such County Superintendent of Schools, who shall make a full and complete investigation of said application and the facts and circumstances relating thereto, and make a written report to the Chairman of the Board of County Commissioners of his county, giving the results of his investigation; which report shall accompany the application of the Board of Commissioners for the admission of such child. Said report shall be upon blanks to be furnished by the Board of Trustees of said Orphan's Home. [*Act approved February 28th, 1903, § 4.*] (8th Sess. Chap. 40.)

1278. *Court may commit children on divorce of parents to the Home.*—Whenever in divorce proceedings the District Court shall deem the parents improper persons to have the care, custody or control of the children of the marriage or whenever the abuse of parental authority shall be established by an action brought for that purpose the court may order the child or children committed to the State Orphan's Home, and may order the parents to pay such sum or sums of money as under their circumstances shall be just, by discretion of the court, and to be paid monthly to the State to defray the expenses of such child or children in the home; and such sum or sums so paid shall be credited to the general fund of the State Orphan's Home. [*Act approved February 28th, 1903, § 5.*] (8th Sess. Chap. 40.)

1279. *Age limit.*—After any child shall have reached the age of sixteen years, the Board of Trustees may discharge him from the home or return him to the county from whence he came; having always in mind due regard for his welfare in so doing. [*Act approved February 28th, 1903, § 6.*] (8th Sess. Chap. 40.)

1280. *Incorrigible children.*—Whenever any child, an inmate of the Orphan's Home, shall be incorrigible, or shall by continuous vicious or immoral conduct be a menace to the welfare of the other wards of the Home, the Superintendent under the direction of the Board of Trustees shall make complaint to the County Attorney who shall thereupon bring proceedings in the District Court against such accused child, and if in the opinion of the District Judge such charges are sustained by competent evidence he shall order the accused committed to the State Reform School. The provisions of Title III, Part III, of the Penal Code relating to the State Reform School shall be applicable to this Section. [Act approved February 28th, 1903, § 7.] (8th Sess. Chap. 40.)

CHAPTER VI.

SOLDIERS' HOME.

- Section 1281. Governor empowered to accept national aid.
 “ 1282. State Auditor authorized to receive and disburse moneys.
 “ 1283. Soldiers' home established.
 “ 1284. Board of Managers.
 “ 1285. Oath and bond.
 “ 1286. Meeting, organization, officers.
 “ 1287. Regular meetings. Quorum.
 “ 1288. Commandant. Rules. Salaries.
 “ 1289. Records.
 “ 1290. Who eligible to admission.
 “ 1291. Admission of soldiers' wives to Home.
 “ 1292. Proposals for site.
 “ 1293. Board may accept donations.
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 “ 1298. Insane inmates.
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 “ 1300. Inspection.
 “ 1301. Contracts.
 “ 1302. Inmates not required to assign pensions.
 “ 1303. Plans for buildings.
 “ 1304. Unlawful use of liquors.
 “ 1305. Chaplain.

1281. Governor empowered to accept National aid.—That the Governor is hereby empowered and directed to accept for the State the conditions imposed by an Act of Congress entitled “An Act to provide aid to State or Territorial Homes for the support

of disabled Soldiers and Sailors in the United States" approved August 27th, 1888. He is further directed to send to the President of the Board of Managers of the National Home for disabled volunteer Soldiers a copy of all laws bearing upon the establishment, regulation and maintenance of the Soldiers Home at Columbia Falls, Montana, with all printed regulations relating to the management of said Home, together with a copy of this and the next Section. [*Act approved March 1st, 1897, § 1.*] (5th Sess. 93.)

1282. *Auditor authorized to receive and disburse moneys.*—The State Auditor is hereby empowered and directed to receive and receipt for any and all moneys that may become due the State by reason of said Act of Congress and to turn the same into the State Treasury for the use and benefit of the State Soldiers' Home to be disbursed and accounted for in the same manner as other money appropriated out of the State Treasury for the maintenance of said Home. [*Act approved March 1st, 1897, § 2.*] (5th Sess. 93-4.)

1283. (§ 2510.) *Soldiers' home established.*—That there is hereby established in this state a soldiers' home, the object of which shall be to provide home and subsistence to honorably discharged soldiers, sailors and marines who have served in the United States army or navy during the war of the rebellion and who have become unable to earn a livelihood by reason of such service, or from age or otherwise. [*Act approved March 18, 1895.*]

1284. (§ 2511.) *Board of managers.*—The general supervision and government of said home shall be vested in a board of managers to consist of five members, one of whom shall be the department commander of the Grand Army of the Republic of the state of Montana for the time being, and the remaining four shall be appointed by the governor by and with the advice and consent of the senate. Of the four members so appointed as aforesaid, two shall hold their office for the term of four years and two for the term of two years respectively, and until their successors are appointed and qualified. The governor at the time of the making of said appointments shall designate the period for which each member is appointed, and thereafter every two years the governor shall appoint two members of said board of managers who shall hold their office for the term of four years and until their successors are appointed and qualified. The governor shall have power to remove any member of the board for inefficiency or other good and sufficient cause, and in case of any vacancy in said board by death or otherwise the governor shall appoint a suitable person to fill the vacancy for the unexpired term. No less than three members of said board of managers shall be ex-soldiers or sailors of the United States, and one of the board

shall be a regular practicing physician, duly licensed under the laws of the state of Montana. [*Act approved March 18, 1895.*]

1285. (§ 2512.) *Oath and bond.*—Before entering upon his duties each member of the board of managers shall take the oath prescribed by law, and shall execute to the state of Montana a bond in the penal sum of five thousand dollars, to be approved by the governor and filed in the office of the secretary of state, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for, all moneys and property which may come into his hands as such manager. [*Act approved March 18, 1895.*]

1286. (§ 2513.) *Meeting. Organization. Officers.*—As soon as practicable after the board of managers are appointed and qualified, and not later than the first Tuesday in May, 1895, and upon due notice given, the members of said board shall meet at the capital of the state and organize by electing one of their number president and one of their number secretary and treasurer of said board, who shall hold their respective offices until the first Tuesday in May, 1896, and they shall be elected annually thereafter. The officers of said board so elected shall each be required to give a bond to the state of Montana in such penal sum as the board may direct, conditioned for the faithful performance of their respective duties. The secretary and the treasurer shall keep a faithful record of all the transactions of the said board of managers and the books and records and accounts pertaining to such soldiers' home under such rules and regulations as may be established by said board and shall receive such salary as said board may determine. [*Act approved March 18, 1895.*]

1287. (§ 2514.) *Regular meetings. Quorum.*—The board of managers of the soldiers' home shall hold three regular meetings each year, to-wit: on the first Tuesday of May, August, and December in each year; and they may have special meetings on the call of the president and one other member of the board for the transaction of such business as may be stated in the call. Three members of the board shall constitute a quorum for the transaction of business. [*Act approved March 18, 1895.*]

1288. (§ 2515.) *Commandant. Rules. Salaries.*—That the board of managers shall appoint a commandant of the home, who shall be a resident of the state, and shall have served in the army or navy of the United States during the late war of the rebellion, and shall have received an honorable discharge therefrom. They shall formulate and publish all necessary rules and regulations for the government of the home and its inmates, beneficiaries, officers and employes, and shall provide penalties and forfeitures for violation of said rules and regulations, to be reasonably and impartially enforced by the commandant of the home, subject to appeal to the board of managers. All subordin-

ate officers, such as may be provided for by the rules and regulations of the home, shall preferably be selected from residents of the state who served in the army or navy of the United States during the war of the rebellion, and received honorable discharge therefrom. The salaries of the commandant and all subordinate officials shall be fixed by said board of managers; *Provided*, That the salary of the commandant shall not exceed one hundred dollars per month, and for such other employes as may be necessary the amounts so paid shall not exceed such reasonable compensation as is paid for like services in similar institutions. Any such subordinate official or employee may be suspended by such commandant for inefficiency or misconduct, but in case of suspension of such official or employe, a statement of the case shall be reported by the commandant to the said board, who shall upon application offer such official or employe a hearing; the action of the board thereon shall be final. [*Act approved March 18, 1895.*]

1289. (§ 2516.) *Records.*—The board of managers shall keep a record of the proceedings of all regular and special meetings, as well as a full and complete account of all moneys or other property received by them, or that have come under their control, from any source whatsoever; a detailed and itemized account of all the expenses; the names, places of birth, full record of service in the army or navy of persons admitted, and the last place of residence before such admissions; all deaths, discharges and removals, with the cause thereof; and the names of persons making donations to the home, with a description of the same. They shall on or before the first day of December in each year transmit to the governor of the state a report in writing containing a detailed statement of the transactions of the board and a full account of the receipts and expenditures of said home for the preceding year, together with such suggestions as they may see fit to make for the future usefulness of said home [*Act approved March 18, 1895.*]

1290. *Who eligible to admission.*—Any soldier, sailor or marine who served in the army or navy of the United States during the late, “Civil War,” or in the Mexican War, or in the late War with Spain, and received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, or by reason of other disability, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the Board of Managers thereof on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to the said soldiers home shall be a proper county charge and be paid by said county if the applicant is unable to pay the same.

Provided, that the benefits of said home shall not be extended to any one who has not resided within the State of Montana for a period of one year next preceding the date of his application, or to any one who has not resided within the County from which he asks to be sent to the home for the period of three months from the date of his application, nor to any one convicted of a felony or of a crime showing moral turpitude, nor shall any one who has been an habitual drunkard be received without sufficient evidence of subsequent good conduct and reformation of character as may be satisfactory to the said Board of Managers. [*Act approved February 22, 1899.*] (6th Sess. 50-1.)

1291. *Admission of soldiers' wives to Home.*—The Board of Managers of the Soldiers' Home is authorized and empowered to admit to the privileges of the Home, under such rules as the Board may prescribe, the wives of such soldiers who are, or who may hereafter become inmates of the Home, and who were married at the time the Home was established, and when practicable give them employment. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 87.)

1292. (§ 2518.) *Proposals for site.*—It shall be the duty of the said board of managers at its first meeting to give notice in at least three newspapers of general circulation in the State of Montana, once a week for three consecutive weeks, that they will for a definite period and not less than thirty days from the date of said notice, receive proposals for a donation of lands for a location of said home, and of money to erect buildings thereon, and any other donation to aid the building, furnishing or maintaining of said home; and at the expiration of the period named in said notice it shall be their duty to meet and consider any proposals which may be submitted, and to examine such of the proposed sites as in their judgment will be best suited for a site for said home; and from the places so proposed they shall make a selection and make report thereof to the governor, and if he shall approve the same then the site so selected shall become the permanent site of the soldiers' home of the state of Montana; *Provided*. That the said board of managers may reject any and all proposals submitted to them, if in their judgment the best interests of the state are subserved thereby; *and provided further*. That no proposal shall be considered by the board that does not contemplate the giving to the state of Montana in fee, for the purpose of a site for said soldiers' home, at least forty acres of good tillable land with water right appurtenant thereto sufficient to irrigate the same if such irrigation be necessary in the cultivation of such land. [*Act approved March 18, 1895.*]

1293. (§ 2519.) *Board may accept donations.*—Said board of managers shall have the power on behalf of the state, to accept

donations of land, money or other valuables by gift, bequest or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said soldiers' home so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists. [*Act approved March 18, 1895.*]

1294. (§ 2520.) *Office of board.*—The principal office of said board of managers, and place of holding all regular meetings, shall at all times after the erection thereof, be located at the soldiers' home. [*Act approved March 18, 1895.*]

1295. (§ 2521.) *Compensation of Board.*—Said board of managers shall receive as compensation for their services the sum of three dollars per day and their actual traveling expenses incurred while attending the meetings or in attending to the transaction of any business by and under the direction of the said board of managers. [*Act approved March 18, 1895.*]

1296. (§ 2522.) *Appropriations.*—That for the purpose of erecting suitable building or buildings and the furnishing and equipping the same, there is hereby appropriated out of any funds in the state treasury or so much thereof as may be necessary the sum of ten thousand dollars. [*Act approved March 18, 1895.*]

1297. (§ 2523.) *Appropriations for maintenance.*—That for the maintenance of said soldiers' home there is hereby appropriated for the year 1895 the sum of five thousand dollars, and for the year 1896 the sum of eight thousand dollars; and the unexpended appropriation of any one year may be carried over and become part of the appropriation of the following year. [*Act approved March 18, 1895.*]

1298. (§ 2524.) *Insane inmates.*—That in case any member of the Montana soldiers' home shall become insane, and shall be so adjudged according to the law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Montana soldiers' home; and the proper officer of said soldiers' home shall draw from the general government any proportion of the cost of maintaining such insane inmate to which such said soldiers' home is entitled by law. [*Act approved March 18, 1895.*]

1299. (§ 2525.) *How money drawn from treasury.*—The method of drawing money from the state treasury and accounting for the same shall be similar to that now in force with other state institutions, as prescribed by the general law. [*Act approved March 18, 1895.*]

1300. (§ 2526.) *Inspection.*—Said soldiers' home shall at all times be subject to the inspection of the board of managers of the national home for disabled volunteer soldiers. [*Act approved March 18, 1895.*]

1301. (§ 2527.) *Contracts.*—That all contracts for the erection of buildings and supplies of whatsoever nature needed for said home shall be advertised and let by contract as provided by the laws of the state of Montana, and no member of the board or officer of the home shall be interested, directly or indirectly, in any contract or award made by the board under penalty of forfeiture of office and fine in similar cases provided by the laws of Montana. [*Act approved March 18, 1895.*]

1302. *Inmates not required to assign pension.*—That any and all persons admitted inmates of the said home shall not assign to the home for its support, any of the pension they may receive from the General Government. [*Act approved February 24th, 1903.*] (8th Sess. Chap. 18.)

1303. (§ 2529.) *Plans for building.*—After the site for said home shall have been selected as herein provided, the said board is hereby empowered and required to cause to be prepared suitable plans and specifications for the buildings of said home. Said plan shall contemplate the erection of a home which shall accommodate not less than fifty nor more than one hundred, and no plan shall be adopted that contemplates the expenditure of more money for its completion than the amount appropriated by this act added to any donations received by the state for the erection of the home. [*Act approved March 18, 1895.*]

1304. (§ 2530.) *Unlawful use of liquors.*—It shall be unlawful for any person to sell, give away, or dispose of in any manner, to any person, any intoxicating liquors at any place within one mile of the site of the soldiers' home, and no license shall be granted to any person to sell intoxicating liquors, any place within one mile of the soldiers' home. [*Act approved March 18, 1895.*]

1305. *Chaplain.*—The Board of Managers shall select and appoint a Chaplain for the Soldiers' Home, who must be a regularly ordained minister of the gospel, and who shall hold divine services at the Soldiers Home at least twice a month, and who shall also conduct the burial service upon the death of any of the inmates of the Home, whenever the same does not conflict with his other engagements. He shall receive as compensation for such services a salary of not less than five dollars per month nor more than ten dollars per month, to be determined by the Board of Managers, which salary shall be paid out of the general appropriation fund for the maintenance of such Home. [*Act approved February 25th, 1905.*] (9th Sess. Chap. 33.)

CHAPTER VII.

FARMERS' INSTITUTES.

Section 1306. Board of Administration.

“ 1307. *Term of office.*

“ 1308. *Expenses, how paid.*

“ 1309. *Meetings.*

“ 1310. *Appropriations.*

1306. *Board of Administration.*—The Board of Administration of the Farmers' Institutes, as provided for in this Act, shall consist as follows: The Governor of the State and the Director of the Montana Experimental Station, both of whom shall be ex-officio members, and the presidents of the following named organizations: The Montana Registered Cattle Breeders Association, The Montana Woolgrowers Association, The Montana Livestock Association, The Montana Horticultural Society, The Montana State Board of Horticulture, The Montana Agricultural Association and the Montana Dairymens Association, when these last two shall have been duly organized. Members of such Board of Administration shall be designated the “Directors of the Montana Farmers' Institutes,” and shall be authorized to hold Institutes for the instruction of the citizens of this State in the various branches of agriculture, and shall prescribe such rules and regulations as they may deem best for organizing and conducting the same. Such Institutes shall be held at least once in each County in each year and at such times and places as the directors may designate; *provided* the requirements of the Board of Administration have been complied with, such as County Institutes or local organizations providing a suitable hall, lighting and heating the same, and bearing necessary advertising expense. The directors may employ an agent or agents to perform such work in organizing or conducting said Institutes as they may deem best. A course of instruction at such Institutes shall be so arranged as to present to those in attendance the results of the most recent investigations in theoretical and practical agriculture. [*Act approved March 6th, 1903, § 1.*] (8th Sess. Chap. 105.)

1307. *Term of office.*—The Board of Administration shall hold office for the period of three years from the date of the passage of this act, and at the expiration of that time, those acting as the presidents of the associations mentioned and the Directors of the Montana Experimental Station, shall be entitled, ex-officio, to act as such directors of the Montana Farmers Institutes. [*Act approved March 14th, 1901, § 3.*] (7th Sess. 55.)

1308. *Expenses, how paid.*—That the expense of such institutes or any expenditure made necessary in carrying out the provisions of this act shall be paid out of such institute funds by the State Treasurer upon warrants issued by the State Auditor,

which warrants shall only be drawn upon the certificate of the chairman of the Board of Administration of the Montana Farmers Institutes. [*Act approved March 14th, 1901, § 4.*] (*7th Sess. 55-6.*)

1309. *Meetings.*—That immediately upon the passage and approval of this Act, the Board of Administration shall meet in the City of Helena and arrange for the first series of Institutes throughout the State, and thereafter such Board shall meet annually on the second Tuesday in September to arrange for such Institutes, and they shall again meet on the second Tuesday in March of each year to audit all expenditures and arrange for the printing in pamphlet form, within sixty days of said meeting, of the "Institute Annual," and that the cost of said Annual shall not exceed One Thousand Five Hundred (\$1500.00) Dollars in any one year. [*Act approved March 6, 1903, § 5.*] (*8th Sess. Chap. 105.*)

1310. *Appropriations.*—For the purpose mentioned in this Act, the Directors may use the sum as they may deem proper not exceeding the sum of Four Thousand Dollars (\$4000.00) per annum, and that until otherwise provided by law the State Treasurer shall pay, out of any money in the State Treasury not otherwise appropriated, a sum not to exceed Four Thousand Dollars (\$4000.00) during each fiscal year hereafter, on the order of the said Board of Directors. Each Institute held under the authority of this Act, shall be entitled to a sum not exceeding Fifty (\$50.00) Dollars from the amount appropriated under this Act. [*Act approved March 6, 1903, § 2.*] (*8th Sess. Chap. 105.*)

CHAPTER VIII.

MONTANA STATE FAIR.

Section 1311. Establishment of Montana State Fair.

" 1312. *Objects and purposes of institution.*

" 1313. *Board of directors. Appointment and term.*

" 1314. *Meetings of board.*

" 1315. *Oath.*

" 1316. *Bond of Treasurer. Removal of director.*

" 1317. *Powers and duties of directors.*

" 1318. *Location of state fair.*

" 1319. *Secretary and treasurer. Duties and salaries.*

" 1320. *State fair fund.*

" 1321. *Vacancies in Board.*

" 1322. *Directors to serve without compensation.*

" 1323. *Salary of Treasurer.*

1311. *Establishment Montana state fair.*—That for the promotion of the public welfare there shall be and is hereby established a State Institution, to be designated and known as the "Montana

State Fair." [Act approved March 6, 1903, § 1.] (8th Sess. Chap. 96.)

1312. *Objects and purposes of institution.*—The objects and purposes of said institution shall be to disseminate knowledge concerning, and to encourage the growth and prosperity of all agricultural, stock grazing, horticulture, mining, mechanical, artistic and industrial pursuits in the State of Montana; and in furtherance of such purposes the management shall provide for an annual fair or exposition, under the auspices of the aforesaid institution, of all said enumerated products, commencing on such day between the fifteenth day of August and the fifteenth day of October, 1903, as the management may designate, and continuing for such period, not exceeding twenty days, as may be deemed advisable, and thereafter between the dates named and for not to exceed the period aforesaid every year such fair or exhibit shall be held. [Act approved March 6, 1903, § 2.] (8th Sess. Chap. 96.)

1313. *Board of directors. Appointment and term.*—The Montana State Fair shall be under the management and control of a Board of Directors, consisting of one resident citizen of each County in the State, and within ninety days after the passage of this Act, the respective Board of County Commissioners of each County shall appoint one member of the Board of Directors of the State Fair, and said Directors shall hold their offices for the period of six years, except as hereinafter provided. [Act approved March 6, 1903, § 3.] (8th Sess. Chap. 96.)

1314. *Meetings of board.*—On the call of the Governor, the said Directors shall meet within thirty days after their appointment, and at such meeting shall organize by electing a President, a Secretary, a Treasurer and such other officers as they may deem necessary. They may adopt such rules and regulations not inconsistent with law, as in their judgment may be calculated to contribute to the advancement of the purposes in this Act indicated. At such meeting they shall select an executive committee, not exceeding five in number, to which executive committee shall be entrusted the active management of the institution, subject to the law and such general rules and regulations not inconsistent therewith, as the Board of Directors may promulgate. Thereafter the Board of Directors shall meet only during the period of the Fair or Exhibition, and between such meetings the business of the institution shall be conducted by the Executive Committee, with the assistance of the Secretary and Treasurer. The Executive Committee may be selected in whole or in part from persons other than members of the Board of Directors. At the first meeting of the Board of Directors, all the directors shall be by lot divided as nearly as may be into three classes. Class one shall hold office for six years; Class two for four years; and class three for two years; and when a new county is created, the member

therefrom shall be appointed for such term as may harmonize with the reappointment of one-third of the Board of Directors every two years. [Act approved March 6, 1903, § 4.] (8th Sess. Chap. 96.)

1315. *Oath.*—That before entering upon the duties of their offices the members of such Board of Directors and of the Executive Committee shall each take and subscribe the oath prescribed by law for other State officers, and shall cause the same with the order of their appointment, to be filed with the Secretary of State. [Act approved March 6, 1903, § 5.] (8th Sess. Chap. 96.)

1316. *Bond of Treasurer. Removal of director.*—That the Treasurer and all persons authorized by said Board or Executive Committee to receive or disburse money; shall be required to give a good and sufficient bond in such form and amount as the State Treasurer may prescribe, and failure to exact such bond shall make the members of the Board and of the Executive Committee jointly and severally liable for any loss to the institution by, through or on account of such failure. Any Director may be removed by the Governor for malfeasance in office, and any member of the Executive Committee may be removed by a majority of the Directors at their pleasure. [Act approved March 6, 1903, § 6.] (8th Sess. Chap. 96.)

1317. *Powers and duties of directors.*—Immediately upon their meeting and organization, the State Fair Directors shall take and have full control and management of the State Fair as a State Institution, and shall have care of the property and be entrusted with the entire direction of the business and financial affairs; and shall in conformity with the provisions of this Act, prepare, adopt, publish and enforce all necessary rules for the management of the State Fair, its meetings and exhibitions, or the guidance of its officers or employees, and shall determine the duties, responsibilities, compensation and tenure of office, of all officers or other employees, and may remove from office any person appointed by them to any office for inefficiency, neglect of duty or malfeasance in office; and shall have power to appoint all necessary marshals to keep order on the grounds and in the buildings of the State Fair, during all exhibitions, and the marshal or marshals so appointed shall be vested with the same authority for such purposes, as executive officers are vested by law. The Directors shall have power to charge entrance fees, gate money, lease stalls, stands, restaurant sites, give prizes and premiums and do all things which by said Directors may be considered proper to conduct in connection with the State Fair not otherwise prohibited by law; *Provided*, however, that neither the Montana State Fair nor its Board of Directors, nor its Executive Committee shall ever incur any debt to be paid by the State of

Montana. [Act approved March 6, 1903, § 7.] (8th Sess. Chap. 96.)

1318. *Location of state fair.*—The Directors shall locate the State Fair upon a tract of land, not less than eighty acres in extent, to be approved by them, within three and one-half miles of the corporate limits of Helena; *Provided* such tract of land is donated to the State free from incumbrance, and conveyed to it by good and sufficient conveyance to be approved by the Governor; *and provided further*, that such Fair and Fair Grounds shall at all times be maintained by the State. The land thus acquired shall be forever set apart for the use and benefit of the Montana State Fair, and the Directors shall, from time to time, cause such improvements to be made thereon, as may be necessary or desirable to improve the same, *provided always*, that no lien or obligation shall ever be created on or against said land and possessions without the consent of the State, nor shall any director or member of the Executive Committee be directly or indirectly interested in any contract or purchase for the use or benefit of the institution. [Act approved March 6, 1903, § 8.] (8th Sess. Chap. 96.)

1319. *Secretary and treasurer. Duties and salaries.*—The secretary and treasurer of the Montana State Fair may be elected from the Board of Directors, or, persons not members of said Board may be selected for either of said positions; *Provided*, that the secretary shall reside and maintain an office at the city of Helena. The secretary may be paid such salary, not exceeding twelve hundred (\$1200.00) dollars per annum, as the directors may designate, and he shall perform such duties as the said directors or Executive Committee may prescribe. He shall keep an accurate account of all expenditures of the institution, and shall file a statement thereof in the office of the state treasurer during the month of December of each year, which statement shall show in detail all receipts and expenditures since the filing of the last statement, and be attested by the treasurer of the institution. The treasurer of the institution shall keep an accurate account of all moneys received and disbursed by him, and, from the opening of the annual State Fair till the close of the year's business, he shall have authority to receive and disburse moneys in settlement of premiums, claims and expenses under such rules and regulations as the directors may prescribe; *Provided*, that during the month of December he shall file with the state treasurer a statement showing all receipts and disbursements, and, in all cases, file vouchers for the same. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 158.)

1320. *State fair fund.*—The State Treasurer shall keep all moneys appropriated for, or by him received from the Montana State Fair in a separate fund to be designated the "State Fair Fund," and he shall pay out the same under such rules, and regu-

lations as the Board of Directors or the Executive Committee of the Fair may prescribe. [*Act approved March 6th, 1903, § 10.*] (*8th Sess. Chap. 96.*)

1321. *Vacancies in board.*—All vacancies in the Board of Directors shall be filled by the Board of County Commissioners of the County whose membership of said Board may be vacant. [*Act approved March 6th, 1903, § 11.*] (*8th Sess. Chap. 96.*)

1322. *Directors to serve without compensation.*—The Directors and members of the Executive Committee shall serve without compensation, but they shall be allowed their actual and necessary expenses going to and returning from, and attending the meetings provided for in this Act. [*Act approved March 6th, 1903, § 12.*] (*8th Sess. Chap. 96.*)

1323. *Salary of Treasurer.*—The treasurer may be paid not to exceed three hundred (\$300.00) dollars per annum for his services. [*Act approved March 7, 1907, § 2.*] (*10th Sess. Chap. 158.*)

CHAPTER IX.

MISCELLANEOUS.

Section 1324. University of Montana and other educational institutions.

“ 1325. *State prison and reformatories.*

1324. (§ 2540.) *University of Montana and other educational institutions.*—The control and management of the University of Montana, school of mines, the agricultural college of Montana, and the state normal school, are provided for in title III., part III., of this code.

1325. (§ 2541.) *State prison and reformatories.*—The control and management of the state prison and state reform school is provided for in part III., of the Penal Code.

TITLE VI.

PUBLIC WAYS.

CHAPTER I. PUBLIC WATERS.

II. HIGHWAYS AND ROADS.

CHAPTER I.

PUBLIC WATERS.

ARTICLE I. GENERAL PROVISIONS.

II. NAVIGATION.

ARTICLE I.

GENERAL PROVISIONS.

1326. *What are navigable waters.*—Navigable waters and all streams of sufficient capacity to transport the products of the

country are public ways for the purposes of navigation and such transportation. "*Provided* that this act shall not be so construed as to in any manner effect or impair any rights acquired prior to its passage by any person, association of persons or corporation; *and provided further* that the right of any person, association of persons or corporation shall not be abridged to take and use any water as now provided by law from any stream or streams for the purpose of irrigation, or any beneficial or industrial pursuit." [Act approved March 22nd, 1901.] (7th Sess. 126-7.)

ARTICLE II.

NAVIGATION.

- Section 1327. Steamers meeting.*
" 1328. *Steamers overtaking.*
" 1329. *Steamers to carry signals at night.*
" 1330. *Penalties, what amount.*
" 1331. *Vessels at anchor to show lights.*
" 1332. *No recovery for collision in case of neglect.*
" 1333. *Vessels to carry what boats.*
" 1334. *Penalty, what amount.*
" 1335. *Racing, penalty for.*
" 1336. *Penalties, how recovered.*

1327. (§ 2580.) *Steamers 'meeting.*—When steamers meet each must turn to the right, so as to pass without interference.

1328. (§ 2581.) *Steamers overtaking.*—A steamer going in the same direction with another steamer ahead of it, must not approach or pass the other within the distance of ten yards; and the steamer ahead must not be so navigated as unnecessarily to bring it within ten yards of the steamer following.

1329. (§ 2582.) *Steamers to carry signals at night.*—When any steamer is running in the night time her master must cause her to carry two conspicuous lights; one exposed near her bow and the other near her stern; the latter must be at least twenty feet above her deck.

1330. (§ 2583.) *Penalties, what amount.*—Every master or other person in charge who violates any of the provisions of the preceding sections, incurs a penalty of two hundred and fifty dollars for each offense.

1331. (§ 2584.) *Vessels at anchor to show lights.*—Whenever any vessel is at anchor in the night time in any of the harbors or ports within the jurisdiction of this state, the master or other person at the time in charge of the vessel, must cause a conspicuous light shown in her rigging at least twenty feet above her deck, and another light from her taffrail, under the penalty of fifty dollars for each neglect.

1332. (§ 2585.) *No recovery for collision in case of neglect.*—Neither the master nor owner of any vessel can recover damages for injuries to the same or to himself by a collision growing out of a non-compliance upon its part with the provisions of this article.

1333. (§ 2586.) *Vessels to carry what boats.*—Every vessel propelled by steam, navigating any waters of this state and carrying passengers, must be provided with one life preserver for each person on board, and with two row boats sufficient to carry twenty-five persons each. All which boats must be attached in such a manner that they can be launched at any time for immediate use.

1334. (§ 2587.) *Penalty, what amount.*—The master and owners and each of them, of any vessel not provided with boats, as required in the preceding section, are subject to a penalty not exceeding two hundred and fifty dollars.

1335. (§ 2588.) *Racing, penalty for.*—If the master or other person in charge, of a steamer navigating any of the waters of this state and used for the conveyance of passengers, or if the engineer or other person in charge of the boiler or other apparatus for the generation of steam does, for the purpose of increasing speed or excelling any other vessel in speed, suffer to be created an undue or an unsafe quantity of steam, he is subject to a penalty of five hundred dollars.

1336. (§ 2589.) *Penalties, how recovered.*—The penalties given by this article may be recovered by the county attorney of any county bordering on the water where the offense was committed or the penalty incurred, to whom notice is first given, and when recovered are to be paid into the treasury of the county. Any judgment recovered hereunder is a lien on the vessel against whose owners or master it is recovered.

CHAPTER II.

HIGHWAYS AND ROADS.

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| ARTICLE | I. | ENUMERATION OF HIGHWAYS. |
| | II. | RIGHTS IN HIGHWAYS. |
| | III. | ROAD TAXES AND FUNDS. |
| | IV. | ROAD DISTRICTS AND DUTIES OF OFFICERS. |
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HIGHWAYS. |
| | VI. | VACATING, OPENING, LAYING OUT OR CHANG-
ING HIGHWAYS. |
| | VII. | PUBLIC BRIDGES. |
| | VIII. | GUIDE BOARDS. |
| | IX. | LAWS OF THE ROAD. |
| | X. | PRIVATE ROADS, TOLL ROADS AND BRIDGES. |
| | XI. | FERRIES. |

ARTICLE I.

ENUMERATION OF HIGHWAYS.

- Section 1337. What are public highways.*
 “ 1338. *All highways continue such until abandoned.*
 “ 1339. *Width of highways.*
 “ 1340. *Vacation only by order. No dedication by user.*
 “ 1341. *Records. Road book.*

1337. *What are public highways.*—All highways, roads, streets, alleys, courts, places and bridges laid out or erected by the public or now traveled or used by the public, or if laid out or erected by others, dedicated or abandoned to the public, or made such by the partition of real property are public highways. [Act approved March 2nd, 1903, § 1.] (8th Sess. Chap. 44.)

✓ 1338. *All highways continue such until abandoned.*—All public highways once established must continue to be public highways until abandoned by the Board of County Commissioners of the county in which they are situated, or by operation of law, or judgment of a court of competent jurisdiction. [Act approved March 2nd, 1903, § 2.] (8th Sess. Chap. 44.)

State v. Auchard, 22 Mont. 16, 55 Pac. 361. A highway by prescription does not exist unless the proof establishes that the general public has used the way, without substantial interruption, for the time fixed by the statute of limitation applicable to lands. The road must be known and used as a highway common to all the people.

State v. Granite Co., 23 Mont. 253; 58 Pac. 439.

M. O. P. Co. v. B. & M. Co., 29 Mont. 431; 65 Pac. 422. Travel by the public generally over unenclosed land,

not confined to a particular way, will not inaugurate such an adverse claim as will properly ripen into a right which may be asserted against the owner.

State v. Mayor, 30 Mont. 340; 76 Pac. 759. A city is charged with the duty of keeping its streets in repair, and the cost of maintaining them is raised by public taxation within the city, but the jurisdiction of the city over the streets is not exclusive of that of the legislative assembly.

People v. Myring, 144 Cal. 354; 77 Pac. 975.

1339. *Width of highways.*—The width of all public highways, except bridges, alleys and lanes, must be sixty feet unless a greater or less width is ordered by the Board of County Commissioners on petition of the persons interested. The width of all private highways and by-roads, except bridges, must be at least twenty feet. Nothing in this Act must be so construed as to increase or diminish the width of either kind of a highway already established or used as such. [Act approved March 2nd, 1903, § 3.] (8th Sess. Chap. 44.)

1340. *Vacation only by order. No dedication by user.*—A highway laid out and worked and used as provided in this Act must not be vacated or cease to be a highway until so ordered by the Board of County Commissioners of the county in which said road may be located; and no route of travel used by one or more persons over another's land shall hereafter become a public road or byway by use, or until so declared by the Board of County

Commissioners, or by dedication by the owner of the land affected. [*Act approved March 2nd, 1903, § 4.*] (8th Sess. Chap. 44.)

1341. *Records. Road book.*—The County Clerk must include in the minutes of the Board of County Commissioners all proceedings of the Board relative to each road or road district, including orders for laying out, altering and opening roads; he must also keep a road book or books in which must be entered the number and name of each public highway in the county, a general reference to its terminal points and course; also the date of the filing of the petition or other paper, a memorandum of every subsequent proceeding in reference to it with the date thereof and the volume of the book or books where it is recorded. [*Act approved March 2nd, 1903, § 5.*] (8th Sess. Chap. 44.)

ARTICLE II.

RIGHTS IN HIGHWAYS.

Section 1342. Public easement.

“ 1343. *Owner may construct side walk.*

1342. *Public easement.*—By taking or accepting land for a highway the public acquire only the right of way and the incidents necessary to enjoying and maintaining the same subject to the regulations in this Act and the Civil Code provided. [*Act approved March 2nd, 1903, § 6.*] (8th Sess. Chap. 44.)

1343. *Owner may construct sidewalk.*—Any owner or occupant of land may construct a sidewalk on the highway along the line of his land subject, however, to the authority conferred by law on the Board of County Commissioners and the road supervisors; and any person using said sidewalk with mule, horse, or team without permission of the owner is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby. [*Act approved March 2nd, 1903, § 7.*] (8th Sess. Chap. 44.)

ARTICLE III.

ROAD TAXES AND FUNDS.

Section 1344. Special road tax.

“ 1345. *County treasurer to collect road taxes.*

“ 1346. *General road fund.*

“ 1347. *Duty of supervisor to notify persons subject to highway labor.*

“ 1348. *Blank receipts.*

“ 1349. *Supervisors to receipt for blanks.*

“ 1350. *Receipt for labor performed.*

“ 1351. *Certificate of labor in lieu of tax.*

“ 1352. *Taxes collected must be paid in quarterly.*

Section 1353. Employers must furnish list of employees liable for tax.

“ 1354. *Employer liable for tax after notice.*

“ 1355. *Road supervisors must pay over collections quarterly.*

1344. *Special road taxes.*—There must be levied and collected on the taxable property in the county not less than one mill nor more than three mills for road purposes, also a special road tax of \$2.00 on every man over the age of 21 years and under the age of 50 years residing in the county. Said special road tax shall be due and payable to the county by each person liable therefor residing therein at any time within the year, when demanded by the County Treasurer or his Deputy or Agent. The Board of County Commissioners shall furnish the County Treasurer sufficient help at the expense of the county to enable him to collect such tax under this Act. For the purpose of carrying the provisions of this section into effect the road supervisors of the various counties are made the agents of the County Treasurers to collect said road tax in cash, in lieu of one day's work of eight hours, in all cases where said tax is not worked out by labor on the roads as in this Act provided. *Provided*, however, that the provisions of this Section shall not extend to incorporated cities and towns which by ordinance provide for the levy and collection of a tax not less than one mill or more than three mills for road, city and alley purposes and also a special road tax of \$2.00 on each man over the age of 21 and under the age of 50 in such cities and towns for road, street and alley purposes. *Provided, further*, that the provisions of this Section shall apply to all incorporated cities and towns which have no such ordinance. [Act approved March 2nd, 1903, § 11.] (8th Sess. Chap. 44.)

1345. *County treasurer to collect road taxes.*—The several County Treasurers must collect all road taxes not otherwise collected, both special and general, levied in each year as required by law for the collection of revenue. [Act approved March 2nd, 1903, § 12.] (8th Sess. Chap. 44.)

1346. *General road fund.*—All moneys collected under the provisions of this Act belong to the general road fund of the county. [Act approved March 2nd, 1903, § 14.] (8th Sess. Chap. 44.)

1347. *Duty of supervisor to notify persons subject to highway labor.*—The road supervisors must notify every person within the road district subject to highway labor, as provided in this Act, and if any person subject to such labor, after three days notice either personally or in writing, left at his usual place of abode, by the supervisor or any other person under his direction, neglects or refuses to be present at the time and place designated by

the supervisor, or, having attended he refuses to obey the direction of the supervisor, or passes his time in idleness or inattention to labor or duties assigned him, every such delinquent becomes liable to punishment as for a misdemeanor; and it is hereby made the duty of the supervisor to complain against all such persons before any justice of the peace having jurisdiction of the offense *provided*, however, that any person may at the time of being notified as aforesaid pay two dollars in money to the road supervisor in lieu of one day's work of eight hours upon the public highway, taking his official receipt for the same. [*Act approved March 2nd, 1903, § 19.*] (9th Sess. Chap. 44.)

1348. *Blank receipts.*—For the purpose of collecting said special tax the Board of County Commissioners of each county must provide blank printed receipts for such special road tax, with proper stubs containing memorandum of name, amount, and date attached. [*Act approved March 2nd, 1903, § 21.*] (8th Sess. Chap. 44.)

1349. *Supervisors to receipt for blanks.*—Such blank receipts as may be necessary must be delivered by the County Clerk to the several road supervisors, and each must receipt to the Clerk for the number of blanks received by him. [*Act approved March 2nd, 1903, § 22.*] (8th Sess. Chap. 44.)

1350. *Receipt for labor performed.*—The road supervisor shall give a receipt to the person performing labor or paying money in accordance with the provisions of this Act, certifying therein that the special road tax for the current year has been fully paid in labor or money (as the case may be) as required by law. [*Act approved March 2nd, 1903, § 20.*] (8th Sess. Chap. 44.)

1351. *Certificate of labor in lieu of tax.*—Any person producing the road supervisor's certificate for labor done or for material furnished on any road or bridge by order of the road supervisor must be allowed the same on his special road tax. [*Act approved March 2nd, 1903, § 13.*] (8th Sess. Chap. 44.)

1352. *Taxes collected must be paid in quarterly.*—All special road taxes collected must be paid into the County Treasury to the credit of the general road fund quarterly and oftener if required by the Board of County Commissioners. [*Act approved March 2nd, 1903, § 23.*] (8th Sess. Chap. 44.)

1353. *Employers must furnish list of employees liable for tax.*—Any person having in his employment any other person liable for the special road tax of two dollars mentioned in this Act, must at the request of the Road Supervisor, give to him a complete list of all the persons so employed, and if any person neglects or refuses to furnish said list, for five days after demand made as above provided, he shall forfeit to the State of Montana the sum of fifty dollars to be recovered by an action brought in the name of the Road Supervisor in any Justice Court having jurisdiction

thereof, and the further sum of fifty dollars for each refusal or neglect to so furnish said list as aforesaid, to be collected as in this Act provided. [Act approved March 2, 1903, § 26.] (8th Sess. Chap. 44.)

1354. *Employer liable for tax after notice.*—If any person required to pay the special road tax mentioned in this Act does not pay the same, or do the work as provided in this Act, and has no property subject to taxation, and the person owing the same is in the employment of any other person, the road supervisor must deliver to the employer a written notice, stating the amount of tax owing to such employee, and from the time of receiving said notice the employer is liable to pay said tax, and the tax so paid may be deducted by such employer from the amount then due or to become due to such employee. [Act approved March 2, 1903, § 27.] (8th Sess. Chap. 44.)

1355. *Road supervisors must pay over collections quarterly.*—The road supervisors must pay over quarterly, or oftener if required by the Board of County Commissioners, to the County Treasurers of their respective counties all moneys collected as a special road tax and take a receipt therefor and attach such receipt to their reports to the Board of County Commissioners. [Act approved March 2, 1903, § 28.] (8th Sess. Chap. 44.)

ARTICLE IV.

ROAD DISTRICTS AND DUTIES OF OFFICERS.

Section 1356. Road districts.

- " 1357. *Duties and powers of county commissioners.*
- " 1358. *Board to appoint supervisors annually.*
- " 1359. *Qualification of supervisors. Bond.*
- " 1360. *Powers and duties of supervisors.*
- " 1361. *Supervisors to make quarterly reports.*
- " 1362. *Supervisor may be removed for neglect of duty.*
- " 1363. *Duty of road supervisor to open road.*
- " 1364. *Compensation for labor.*
- " 1365. *Duty to keep accounts of work.*
- " 1366. *Quarterly statement of work.*
- " 1367. *Commissioners to examine and allow accounts.*
- " 1368. *Officers auditing void claims liable on bond.*
- " 1369. *Payment on void contracts prohibited.*
- " 1370. *Power of supervisor to open drains or ditches.*
- " 1371. *Power to purchase tools and implements.*

1356. *Road districts.*—The Board of County Commissioners of the several counties must divide their respective counties into suitable road districts and may change the boundaries thereof. [Act approved March 2, 1903, § 8.] (8th Sess. Chap. 44.)

1357. *Duties and powers of county commissioners.*—The Board of County Commissioners of the several counties of the state have general supervision over the highways within their respective counties. They must:

1. Provide suitable books and have recorded therein a description of all highways mentioned in this Act.

2. Cause to be surveyed, viewed, laid out, recorded, opened and worked such highways as are necessary for public convenience as in this Act provided.

3. Cause to be recorded as highways such roads as have become such by usage, dedication or abandonment to the public; also all such streets and roads as have been or may be declared such under Section 6901 (1358) of the Code of Civil Procedure of the State of Montana.

4. Abolish or abandon such as are not necessary.

5. Contract, agree for, purchase or otherwise acquire the right of way over private property for the use of public highways, and for that purpose institute or require the County Attorney to institute proceedings under Title VII, Part III, of the Code of Civil Procedure, and to pay therefor from the general road fund of the county.

6. In their discretion let out by contract the construction, maintenance, and improvements of the highways, and the construction or maintenance or the repairs of bridges, or other adjuncts to highways, when the amount of work to be done exceeds \$200.00, order and direct the road supervisors in regard to work to be done on particular highways in their districts.

7. In their discretion cause to be erected and maintained on the highways they may designate, guideposts properly inscribed.

8. The Board of County Commissioners shall have power to do whatever may be necessary in their judgment and discretion, for the best interests of the roads and road districts of their several counties, and the road supervisor shall in all things be under the direction and control of the Board of County Commissioners. [*Act approved March 2nd, 1903, § 9.*] (8th Sess. Chap. 44.)

1358. *Board to appoint supervisors annually.*—The Board of County Commissioners of the several counties must divide their respective counties into suitable road districts and appoint road supervisors for the same, at their regular meeting after the passage and approval of this Act; and thereafter, all road supervisors must be appointed by the Board of County Commissioners at their March session and said road supervisors must serve for the term of one year and until their successors are appointed and qualified. [*Act approved March 2, 1902, § 17.*] (8th Sess. Chap. 44.)

1359. *Qualifications of supervisor. Bond.*—The road supervisor shall be an elector of the County and a resident of the district

in and from which he shall be appointed and shall within ten days after receiving a notice of his appointment, qualify by taking the oath of office and give a bond for the faithful performance of his duties in such sum as the Board of County Commissioners shall direct, the sureties thereof to be approved by said Board, and a recovery on such bond shall be for the benefit of the county in which the penalty has been incurred. [*Act approved March 2, 1903, § 18.*] (*8th Sess. Chap. 44.*)

1360. *Powers and duties of supervisors.*—Road supervisors under the direction and supervision of the Board of County Commissioners must:

1. Take charge of the highways within their respective districts.

2. Keep them clear from obstructions and in good repair.

3. Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair and renew them when destroyed.

4. Make quarterly reports, or oftener if required by the Board of County Commissioners, under oath of the number of days they have been employed during the preceding three months; the number of days labor performed upon the roads and highways in their respective districts, by whom performed, and the wages paid per day; filing therewith a receipt or receipts signed by each and all persons who have performed labor, stating the number of days of labor performed and the amount received for the same; also the amount and value of the materials and kind thereof.

5. Such road supervisor shall receive not less than two dollars per day for eight hours labor, nor more than three dollars per day for eight hours labor for himself, or men under his charge, and all team hire shall be paid at the rate of not less than \$1.50 nor more than \$3.00 per day for eight hours labor on the county roads. Road supervisors must give such bonds as may be required by the Board of County Commissioners.

6. The road supervisors shall do whatever the Boards of County Commissioners may order or direct and in the manner directed by said Boards. [*Act approved March 2nd, 1903, § 10.*] (*8th Sess. Chap. 44.*)

1361. *Supervisors to make quarterly reports.*—The road supervisors of the respective road districts must make out quarterly, or when required by the Board of County Commissioners at any other time, a true and correct statement of all moneys collected by him and the number of day's work performed in accordance with the provisions of this Act duly sworn to and filed with the County Clerk, and if found correct by the Board of County Commissioners they must pay the same by warrant drawn on the general road fund of the county. [*Act approved March 2, 1903, § 24.*] (*8th Sess. Chap. 44.*)

1362. *Supervisor may be removed for neglect of duty.*—If any road supervisor neglects or fails to perform the duties required by law, and such rules and regulations as may be laid down by the Board of County Commissioners, the Board of County Commissioners may remove him and appoint a suitable person road supervisor for the unexpired term. [Act approved March 2, 1903, § 25.] (8th Sess. Chap. 44.)

1363. *Duty of road supervisor to open road.*—The road supervisor must open or cause to be opened, when ordered by the Board of County Commissioners, all public highways which have been laid out and established according to law in any part of his road district, and must keep the same in good repair, and if such levy is not sufficient the Board of County Commissioners is authorized to appropriate from the general road tax any amount they may see fit for the use and benefit of such district. [Act approved March 2, 1903, § 29.] (8th Sess. Chap. 44.)

1364. *Compensation for labor.*—Whenever the Board of County Commissioners direct any road supervisor to repair any public highway in his district, or to construct any new highway therein, it is the duty of the road supervisor to proceed without unnecessary delay, to repair or construct said highway. The road supervisor is empowered to employ suitable laborers, teams and implements, and to contract as to the price to be paid therefor, which must not exceed the rate of Three Dollars per day for each person, and Six Dollars per day for team and driver; the price to be fixed by the Board of County Commissioners, and the amount of the expenditures for such labor, together with the compensation to be paid to the supervisor shall not exceed in the aggregate the sum apportioned quarterly by the Board of County Commissioners to his road district. [Act approved March 2, 1903, § 30.] (8th Sess. Chap. 44.)

1365. *Duty to keep accounts of work.*—The road supervisor must keep a correct account of all such labor, and give to the person performing it, or furnishing any animals or implements, a certificate stating the number of days work performed and the price agreed upon therefor, and the number of days any animals or implements have been used, and the price to be paid therefor, not exceeding the limit above prescribed. [Act approved March 2, 1903, § 31.] (8th Sess. Chap. 44.)

1366. *Quarterly statement of work.*—The road supervisor must make and file with the County Clerk on or before each quarterly meeting of the Board of County Commissioners, or monthly, if required by them, a detailed statement showing:

1. The names of all persons employed to work on the public highways, the number of days each person has worked, and the place or places where the work was done, and the date thereof, and the price to be paid therefor.

2. The number of teams and implements used, and of whom employed, and the place or places where they worked, or where used, and the price agreed to be paid therefor.

3. The number of days the supervisor has been employed in attending to the duties of his office.

4. The above statement must be itemized and sworn to by the supervisor and filed with the county clerk, with the account for his services rendered. [*Act approved March 2, 1903, § 32.*] (8th Sess. Chap. 44.).

1367. *Commissioners to examine and allow account.*—The Board of County Commissioners at the first quarterly meeting, or at any special meeting, held after filing the statement mentioned in the preceding section, must examine the same, and if found correct, cause an order to be drawn on the county treasurer against the road fund for the amount due any road supervisor for his services. Upon the presentation of any certificate issued by road supervisors as provided in the next preceding section, and the verification by the owners thereof, as in other cases of claims against the county, the Board of County Commissioners must cause to be issued to the owner or holder of such claim, a warrant for the amount thereof drawn on the county treasurer against the road fund. [*Act approved March 2, 1903, § 33.*] (8th Sess. Chap. 44.)

1368. *Officers auditing void claim liable on bond.*—All County Commissioners and any other officer authorizing or aiding to authorize or auditing or allowing any claim or demand upon or against the treasury, or any fund thereof, in violation of any of the provisions of this Act are liable in person and upon their official bond to the person or persons damaged by such illegal authorization to the extent of his loss by reason of the non-payment of his claim. [*Act approved March 2nd, 1903, § 16.*] (8th Sess. Chap. 44.)

1369. *Payment on void contracts prohibited.*—All contracts, authorizations, allowances, payments and liability to pay made or attempted to be made in violation of this Act are absolutely void and must never be the foundation or basis of a claim against the county. [*Act approved March 2nd, 1903, § 15.*] (8th Sess. Chap. 44.)

1370. *Power of supervisor to open drains or ditches.*—The road supervisor has authority to open or construct drains and ditches for the making and preserving of roads and highways, doing as little injury as may be to the adjoining land, and any person stopping or obstructing the drains or ditches so made forfeits the sum of Twenty Dollars, to be recovered by the supervisor in a civil action in any court of competent jurisdiction. If any person feels aggrieved by the act of any supervisor he may make complaint in writing to the Board of County Commissioners who must

allow just damages and pay the same out of the road fund. (*Act approved March 2, 1903, § 34.*) [8th Sess. Chap. 44.]

1371. *Power to purchase tools and implements.*—Road supervisors may, under the direction of the Board of County Commissioners, purchase any plows, scrapers, or other implements necessary for the use of the road district, and pay for the same out of the general road fund of the county. The supervisor must preserve such tools and implements and must not allow the same to be used except on public highways. At the expiration of his term of office the Road Supervisor must turn over all such tools and implements to his successor or to the County Commissioners. [*Act approved March 2, 1903, § 35.*] (8th Sess. Chap. 44.)

ARTICLE V.

OBSTRUCTIONS IN AND ENCROACHMENTS ON HIGHWAYS.

Section 1372. Removal of obstruction. Repair of bridges.

- " 1373. *Protection of highway from encroachment.*
- " 1374. *Notice to owner to remove encroachment.*
- " 1375. *Penalty for failure to remove encroachment.*
- " 1376. *Action to abate nuisance.*
- " 1377. *Expense of removal.*
- " 1378. *Penalty for obstruction.*
- " 1379. *Damages for overflow of water.*
- " 1380. *Permits for excavations and bridges.*
- " 1381. *Duty of persons to notify supervisor of obstructions.*
- " 1382. *Felling trees in highway.*
- " 1383. *Notices on bridges.*
- " 1384. *Destruction of shade or ornamental trees.*
- " 1385. *Publication of notice to non-residents.*
- " 1386. *County attorney to prosecute violations.*
- " 1387. *Inspection of highways.*
- " 1388. *Fees for inspection.*
- " 1389. *Report of inspection.*

1372. *Removal of obstruction. Repair of bridges.*—If at any time during the year any highway becomes obstructed from any cause, or any bridge needs repairing or becomes dangerous for the passage of teams or travelers, the supervisor of the road district upon being notified thereof, must forthwith cause such obstruction to be removed, or bridge repaired for which purpose he must immediately order out such number of inhabitants of his district as may be necessary to remove such obstruction or repair such bridge; and all persons so ordered out are, after having received notice, subject to the same restrictions and liable to the same penalties as if ordered out under Section 19 (1347) of this Act. [*Act approved March 2, 1903, § 36.*] (8th Sess. Chap. 44.)

1373. *Protection of highway from encroachment.*—If any highway duly laid out or erected is encroached upon by fences, buildings or otherwise, the road supervisor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway. [Act approved March 2, 1903, § 37.] (8th Sess. Chap. 44.)

1374. *Notice to owner to remove encroachment.*—Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence, if he be known to the person giving such notice and reside in the county; if not, it must be posted on the encroachment specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same forthwith. [Act approved March 2, 1903, § 38.] (8th Sess. Chap. 44.)

1375. *Penalty for failure to remove encroachment.*—If the encroachment is not removed forthwith, or commenced to be removed forthwith, and the removal is not diligently prosecuted, the one who caused, owns, or controls the encroachment forfeits Ten Dollars for each day the same continues unremoved. If the encroachment is such as to effectually obstruct and prevent the use of the highway for vehicles, the road supervisor must forthwith remove the same. [Act approved March 2, 1903, § 39.] (8th Sess. Chap. 44.)

1376. *Action to abate nuisance.*—If the encroachment is denied, and the owner, occupant or person controlling the matter or thing charged with being an encroachment, refuses either to remove or permit the removal thereof, the road supervisor must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may in addition to having the same abated, recover Ten Dollars for every day such nuisance remained after notice, and also his costs in said action. The Board of County Commissioners may at any time order the supervisor to forthwith remove any such encroachment without commencing an action. [Act approved March 2, 1903, § 40.] (8th Sess. Chap. 44.)

1377. *Expense of removal.*—If the encroachment is not denied, but is not removed for five days after the notice is complete, the road supervisor may remove the same at the expense of the owner, occupant or person controlling the same, and recover his costs and expenses, and also for each day the same remained after notice was complete, the sum of Ten Dollars in an action for that purpose. [Act approved March 2, 1903, § 41.] (8th Sess. Chap. 44.)

1378. *Penalty for obstruction.*—Whoever obstructs or injures any highway, or diverts any water course thereon, or drains any water from his land upon any highway, to the injury thereof, by means of ditches or dams, is liable to a penalty of Ten Dollars for

each day such obstruction or injury remains and must be punished as provided in Section 8736 (1031) of the Penal Code. It shall be the duty of the road supervisor to notify the County Attorney of any and all violations of this act. [Act approved March 2, 1903, § 42.] (8th Sess. Chap. 44.)

1379. *Damages from overflow of water.*—Any person storing or distributing water for any purpose, who permits the water to overflow any highway to the injury thereof, must, upon notification by the road supervisor of the district where such overflow occurred, repair the damages occasioned by overflow; and should such repair not be made within a reasonable time by such person, the road supervisor must make such repairs and recover the expense thereof from such person in an action at law. [Act approved March 2, 1903, § 43.] (8th Sess. Chap. 44.)

1380. *Permits for excavations and bridges.*—All persons contemplating the excavating of irrigation, mining, drainage or other ditches, across the public highways are required to obtain a permit in writing from the Board of County Commissioners or the Supervisor of said district before beginning such excavations, and to bridge such irrigation, mining, drainage or other ditches at once, substantially and in accordance with the plans and specifications furnished by the Board of County Commissioners; and thereafter said bridges shall be maintained by the county. And on failure or neglect to bridge as in this section provided, the supervisor of the road district must immediately remove any obstruction placed there, and refill such ditch, if necessary for the convenience of the travelling public. [Act approved March 2, 1903, § 44.] (8th Sess. Chap. 44.)

1381. *Duty of persons to notify supervisor of obstruction.*—It shall be the duty of any person finding any obstruction upon any highway of this State to forthwith notify the Road Supervisor of such obstruction. [Act approved March 2, 1903, § 45.] (8th Sess. Chap. 44.)

1382. *Felling trees in highway.*—Whoever cuts down a tree so that it falls into any highway must forthwith remove the same, and is liable to a penalty of Ten Dollars for every day the same remains in such highway. [Act approved March 2, 1903, § 46.] (8th Sess. Chap. 44.)

1383. *Notices on bridges.*—Road supervisors must, when ordered by the Board of County Commissioners so to do, put upon bridges under their charge notices that there is "Five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to pay Five Dollars fine for each offense. [Act approved March 2, 1903, § 47.] (8th Sess. Chap. 44.)

1384. *Destruction of shade or ornamental trees.*—Whoever digs up, cuts down or otherwise maliciously injures or destroys

any shade or ornamental tree on any highway, unless the same is deemed an obstruction by the Board of County Commissioners, and removed under their direction, forfeits One Hundred Dollars for each tree. [Act approved March 2, 1903, § 48.] (8th Sess. Chap. 44.)

1385. *Publication of notice to non-residents.*—When notice is required to be served upon non-resident land owners under any of the provisions of this Act, such notice shall be served by publication as authorized by the Board of County Commissioners; and for all purposes non-resident land owners upon whom personal service cannot be made within the county, must be considered as non-consenting land owners. [Act approved March 2, 1903, § 49.] (8th Sess. Chap. 44.)

1386. *County attorney to prosecute violations.*—The County Attorney, upon complaint of the road supervisor, or any other person, must prosecute all actions under the provisions of this Act by a suit in the name of the state and all penalties and forfeitures must be paid into the general road fund of the county. [Act approved March 2, 1903, § 50.] (8th Sess. Chap. 44.)

1387.—*Inspection of highway.*—The Board of County Commissioners, may by order, direct the County Surveyor, or any member of said Board, or both the County Surveyor and any member of said Board, to inspect the condition of any highway or bridge in the County, and the work done thereon, before payment therefor. [Act approved March 3, 1905, § 1.] (9th Sess. Chap. 76.)

1388. *Fees for inspection.*—Such member of said Board shall receive for making said inspection the sum of \$5.00 per day, and the County Surveyor shall receive for making said inspection, and for all other work performed for the County, the sum of \$7.00 per day and actual travelling expenses; which sums must be in full payment for mileage, expenses and per diem for the services aforesaid, and shall be audited and allowed in the same manner as any other claim against the County. [Act approved March 3, 1903, § 2.] (9th Sess. Chap. 76.)

1389. *Report of inspection.*—The County surveyor, or such member of said Board, or both the County Surveyor and such member of said Board, when they act jointly, must at the next regular meeting of the Board present and file written report of such inspection. [Act approved March 3, 1905, § 3.] (9th Sess. Chap. 76.)

ARTICLE VI.

VACATING, OPENING, LAYING OUT OR CHANGING HIGHWAYS.

- Section 1390. *Petition for highway. Number of petitioners.*
 “ 1391. *Contents of petition.*
 “ 1392. *Appointment of viewers.*
 “ 1393. *Notice to viewers. Oath.*

- Section 1394. Qualification and duties of viewers.*
 “ 1395. *Report of viewers.*
 “ 1396. *Compensation of viewers.*
 “ 1397. *Hearing on report. Notice.*
 “ 1398. *Ordering highways opened. Compensation of owners of land.*
 “ 1399. *Ascertainment of damages.*
 “ 1400. *Appeal from award.*
 “ 1401. *Awards payable out of road fund.*
 “ 1402. *Record of viewer's report.*
 “ 1403. *Notices of opening road.*
 “ 1404. *Road not to be opened through growing crops.*
 “ 1405. *Contract for opening road.*
 “ 1406. *Record of conveyance of or judgment for right-of-way.*
 “ 1407. *Crossing railroads, canals, or ditches on public lands.*
 “ 1408. *Removal of fences.*
 “ 1409. *Highways on section lines.*
 “ 1410. *Changing highways to section lines.*

1390. *Petition for highway. Number of petitioners.*—Any ten, or a majority, of the free holders of a road district, taxable therein for road purposes, may petition in writing, the Board of County Commissioners to alter or discontinue any highway or to lay out a new highway therein. When a highway is petitioned for upon the dividing line between two counties, the same course must be pursued as in other cases, except that a copy of the petition must be presented to the Board of County Commissioners of each county, who must appoint viewers to act jointly, and report to their respective boards the action of such viewers. [*Act approved March 2, 1903, § 54.*] (8th Sess. Chap. 44.)

1391. *Contents of petition.*—The petition must set forth and describe particularly the highway to be abandoned, discontinued, altered, or constructed, and if the same is to be altered, laid out, or constructed, the general route thereof, over what lands, who are owners thereof, whether such of them as can be found consent thereto, and if not the probable cost of the right of way where such consent is not had, the necessity for, and advantages of the proposed road. [*Act approved March 2, 1903, § 55.*] (8th Sess. Chap. 44.)

1392. *Appointment of viewer.*—Upon filing such petition the Board of County Commissioners may appoint three viewers, one of whom may, in the discretion of the Board of County Commissioners, be the county surveyor. If the county surveyor cannot serve, the Board may appoint another surveyor or other person who shall be a freeholder of the county, and jointly view with two resident freeholders of the county in which the proposed road

is situated, all of whom must be disinterested citizens. Said viewers shall submit to the Board of County Commissioners their written report showing the estimated cost of change, alteration, or opening, including the purchase of right of way if any, and their views of the necessity therefor. [Act approved March 2, 1903, § 56.] (8th Sess. Chap. 44.)

1393. *Notice to viewers. Oath.*—The sheriff, constable or any other person of the proper county, shall serve the warrant mentioned in the preceding section, by delivering a copy to each of the viewers named therein, in which case the original shall be returned to the county clerk, with the endorsement of the service thereon; or a copy of such warrants shall be sent by the county clerk by mail (registered) postage prepaid, to each of the viewers, in which case a certificate of such mailing shall be endorsed upon the original warrant in the county clerk's office, and shall be sufficient proof of service. Every person appointed a viewer shall take an oath or affirmation to discharge the duties of viewer of the road recited in the petition, faithfully and impartially according to law. Such oath or affirmation may be administered by any one of the viewers who has been previously sworn by a proper officer. [Act approved March 2, 1903, § 57.] (8th Sess. Chap. 44.)

1394. *Qualification and duties of viewers.*—The road viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new highway over the most practicable route; notify the residents, owner or agent of land over which it passes of the proposed route; ascertain whether the resident owners consent thereto, and the amount if any, they claim or demand for the right of way over the same, estimate the actual damage to any land over which it passes and the cost of any bridges or grading necessary; the necessity for the public convenience to be subserved by the highway, and whether the opening thereof or change therein proposed should be made. [Act approved March 2, 1903, § 58.] (8th Sess. Chap. 44.)

1395. *Report of viewers.*—When the view of the proposed alteration or new highway is completed, the viewers must report to the Board of County Commissioners:

1. The course, termini, length, and probable cost of construction of the proposed highway.
2. The estimate of damage to the owner of any land over which it is proposed to run the highway.
3. The names of land owners who consent to give the right of way and their written consent thereto.
4. The names of the land owners who do not consent, the amount of damage claimed by each, but when there are non-resident land owners and no agent upon the land upon whom

notice can be served, such non-resident land owners must be considered as non-consenting land owners, unless their written consent is obtained.

5. Such other facts bearing upon the subject, of importance, to be known by the Board of County Commissioners.

6. They may also, in their discretion, or by order of the Board of County Commissioners, report upon the feasibility and cost of any other route than the one petitioned for, which would serve the same purposes, and also report as to the necessity of a greater, or the practicability of a less width of road than petitioned for. [*Act approved March 2, 1903, § 59.*] (8th Sess. Chap. 44.)

1396. *Compensation of viewers.*—The viewers, except the county surveyor, must be paid not to exceed three dollars each per day for their services out of the general road fund of the county. [*Act approved March 2, 1903, § 60.*] (8th Sess. Chap. 44.)

1397. *Hearing on report. Notice.*—The Board of County Commissioners at the next meeting after the filing of the report, or at the time when the report is filed, if then in session, must fix a day for hearing the same, must notify the owners of lands not consenting to give the right of way, of the hearing, by having written notice served on them by registered mail, postage prepaid, to their post office address or to that of the occupant or agent of the owner; or if neither the owner, agent of the owner, or occupant can be so notified, by reason of non-residence or other cause, then by posting notices, one at a conspicuous place on the land, or left at the owner's, agent's, or occupant's residence, and one at the Court House, ten days prior to the day fixed for the hearing, and must on that day fixed for the hearing or to which it may be postponed or adjourned, hear the evidence and proof from all parties interested for and against the proposed alteration or new road, ascertain and by order declare the amount of damage awarded to each non-consenting land owner, and declare the report of the viewers to be approved or rejected. [*Act approved March 2, 1903, § 61.*] (8th Sess. Chap. 44.)

1398. *Ordering highway opened. Compensation of owners of land.*—If the Board approve the report, and there are no non-consenting land owners, the highway must by order, be declared a public highway and the road supervisor ordered to open the same to the public, and if the Board order it, to require the county surveyor, to survey the same and plat it, and file his field notes with the county clerk, for which the surveyor may receive seven dollars per day for the time actually employed. The Board of County Commissioners upon making each and every order establishing the location or alteration of any highway, must order the amount of damages sustained by each and every person owning

or claiming lands, or any improvements thereon and affected thereby, as finally fixed and assessed by them, to be set apart in the treasury, out of the proper funds, to be paid to the proper owner or claimant, if known, and to be kept for the owner or claimant, if unknown, and to be paid to him or her upon showing or establishing their right or title to such lands or improvements. Any moneys set apart as herein provided for, must be returned to the fund from which it was set apart, if not paid to or accepted by the proper owner or claimant. If the awards are all accepted the road must be declared a public highway and be opened as before provided. (*Act approved March 2, 1903, § 62.*) (8th Sess. Chap. 44.)

1399. *Ascertainment of damages.*—The damages must be determined by ascertaining the benefits and damages accruing to any person by reason of altering, changing or laying out such road, and the sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded. (*Act approved March 2, 1903, § 63.*) (8th Sess. Chap. 44.)

1400. *Appeal from award.*—If any award of damages is not accepted within thirty days from the date of the award it shall be deemed rejected by the land owners. The Board must, by order, direct proceedings to procure the right of way to be instituted by the County Attorney of the County under and as provided in Title VII Part III of the Code of Civil Procedure against all non-accepting land owners, and when thereunder the right of way is procured, the road must be declared a public highway and opened as hereinbefore provided. [*Act approved March 2, 1903, § 64.*] (8th Sess. Chap. 44.)

1401. *Awards payable out of road fund.*—All awards by agreement, ascertainment by the Board of County Commissioners, or by the proper court, and all expenses of viewing, surveying, laying out or altering any road must be paid out of the general road fund on the order of the Board of Commissioners. [*Act approved March 2, 1903, § 65.*] (8th Sess. Chap. 44.)

1402. *Record of viewer's report.*—If a highway is opened or altered, the final report of the viewers, including the plat, field notes, and report of the surveyor, must be recorded in the office of the county clerk in books kept for that purpose. [*Act approved March 2, 1903, § 66.*] (8th Sess. Chap. 44.)

1403. *Notices of opening road.*—If a highway is ordered to be altered, or opened, the Board of County Commissioners must cause notices thereof to be posted at three public places along the line of said highway stating that said highway will be opened and worked after sixty days from the date of posting said notices. [*Act approved March 2, 1903, § 67.*] (8th Sess. Chap. 44.)

1404. *Road not to be opened through growing crops.*—No highway must be ordered opened through fields of growing crops

or along the line where crops would thereby be exposed to stock until the owner thereof has sufficient time to harvest and care for such crops. [*Act approved March 2, 1903, § 68.*] (8th Sess. Chap. 44.)

1405. *Contract for opening road.*—When a highway is to be altered, widened, changed or laid out, the county clerk must notify the supervisor of the proper district and furnish him with a certified copy of the order of the Board of County Commissioners, *provided*, however, that when the cost of altering, widening, changing or laying out, or constructing any new road, exceeds \$200.00, the work may, in the discretion of the Board of County Commissioners, be let by contract; but before any contract shall be let as provided herein, the Board of County Commissioners shall advertise for bids therefor, at least once a week for two successive weeks in a newspaper of general circulation in the county, and the contract shall then be awarded to the lowest responsible bidder, who shall, before entering upon the performance of the work, execute and deliver to the Board of County Commissioners an undertaking, with two or more sureties, to be approved by the Board of County Commissioners in a sum not less than twice the amount for which the contract is awarded, *provided*, however, the Board of County Commissioners may reserve the right to reject any and all bids. [*Act approved March 2, 1903, § 69.*] (8th Sess. Chap. 44.)

1406. *Record of conveyance of judgment for right of way.*—In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing, conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the judgment of the court condemning the same, must be made and filed and recorded in the office of the county clerk, in which the land so conveyed or condemned must be particularly described. [*Act approved March 2, 1903, § 70.*] (8th Sess. Chap. 44.)

1407. *Crossing railroads, canals or ditches on public lands.*—Whenever highways are laid out across railroads, canals, or ditches, on public lands, the owners or corporations using the same must, at their own expense, so prepare their roads, canals or ditches, that the public highway may cross the same without damage or delay and when the right of way for a public highway is obtained through the judgment of any court over any railroad, canal or ditch, no damage must be awarded for the simple right to cross the same. [*Act approved March 2, 1903, § 71.*] (8th Sess. Chap. 44.)

1408. *Removal of fences.*—When the alteration of an old or the opening up of a new road makes it necessary to remove fences on land given, purchased or condemned by order of the

court for road or highway purposes, notice to remove the fences must be given by the road supervisor to the owner, the occupant or agent, by registered mail, postage prepaid, to his or her address, and if the same is not done within ten days thereafter, or commenced and prosecuted with due diligence, the road supervisor must cause it to be removed at the expense of the owner and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment. [Act approved March 2, 1903, § 72.] (8th Sess. Chap. 44.)

1409. *Highways on section lines.*—Highways must be laid out and opened when practicable upon subdivision or section lines; *provided*, however, that the section shall not be construed to prevent roads being laid out on diagonal lines when public purposes shall be best subserved thereby. [Act approved March 2, 1903, § 73.] (8th Sess. Chap. 44.)

1410. *Changing highways to section lines.*—Upon a petition for that purpose by a majority of the free holders or the owners, residing upon any highway, when it can be done without material damage, the Board of County Commissioners may change such highways to subdivision or section lines, and lay out and open the same thereon; *provided*, however, that those interested in making such change must bear all the cost and expense thereof. [Act approved March 2, 1903, § 74.] (8th Sess. Chap. 44.)

ARTICLE VII.

PUBLIC BRIDGES.

Section 1411. How public bridges maintained.

“ 1412. *Special levy for bridges.*

“ 1413. *Contract for construction.*

“ 1414. *Contract awarded to lowest responsible bidder.*

“ 1415. *Bridges crossing county lines.*

“ 1416. *Term “bridge” includes culverts and approaches.*

1411. *How public bridges maintained.*—All public bridges are maintained by the county at large under the management and control of the Board of County Commissioners, the expense of construction, maintaining and repairing the same as provided in this Act. [Act approved March 2, 1903, § 75.] (8th Sess. Chap. 44.)

1412. *Special levy for bridges.*—The Board of County Commissioners may levy a special tax not to exceed one mill on a dollar of the taxable property of the county for the purpose of constructing, maintaining, and repairing free public bridges. Such tax must be levied and collected in the same manner as other taxes, and the money when collected and paid into the county treasury must be kept as a special bridge fund subject to the order of the Board of County Commissioners, to be used

in the construction, maintaining and repairing of bridges at such places as said Board directs. [*Act approved March 2, 1903, § 76.*] (8th Sess. Chap. 44.)

1413. *Contract for construction.*—No bridge, the cost of construction or repairs of which exceeds Two Hundred dollars, must be constructed or repaired except on the order of the Board of County Commissioners; and when ordered to be constructed or repaired it shall be done by contract. Before any contract shall be let as provided herein the Board of County Commissioners shall advertise for bids therefor at least once a week for two successive weeks in a newspaper of general circulation in the county, and a contract shall then be awarded to the lowest responsible bidder, who shall, before entering upon the performance of the work, execute and deliver to the said Board an undertaking, with two or more sureties, to be approved by the Board of County Commissioners, in a sum not less than twice the amount for which the contract is awarded. [*Act approved March 2, 1903, § 77.*] (8th Sess. Chap. 44.)

1414. *Contract awarded to lowest responsible bidder.*—All bids must be sealed, opened at the time specified in the notices, and a contract awarded to the lowest responsible bidder. The Board of County Commissioners may, however, reject any and all bids. The contract and bond for its performance must be entered into and approved by the said Board, except in cases of great emergency, and by the unanimous consent of all its members, the said Board may proceed at once to construct, replace and repair any and all structures of whatever nature without notice. [*Act approved March 2, 1903, § 78.*] (8th Sess. Chap. 44.)

1415. *Bridges crossing county line.*—Bridges crossing the line between counties must be constructed by the counties into which said bridges reach, and each of the counties must pay such portion of the cost as has been previously agreed upon by the Board of County Commissioners of the respective counties. [*Act approved March 2, 1903, § 79.*] (8th Sess. Chap. 44.)

1416. *“Bridge” includes culverts and approaches.*—The word “bridges” in this Act includes the approaches thereto and culverts. [*Act approved March 2, 1903, § 82.*] (8th Sess. Chap. 44.)

ARTICLE VIII.

GUIDE BOARDS.

Section 1417. *Duty of county commissioners to erect guide board at forks of county roads.*

“ 1418. *Construction of guide boards.*

“ 1419. *Penalty for removing, injuring or defacing guide boards.*

1417. *Duty of county commissioners to erect guide boards at forks of county roads.*—The several Board of County Commissioners in the State of Montana must erect, or cause to be erected, within six months after the passage of this Act, and maintain at the expense of the county, suitable guide boards at or within one hundred feet from forks of all county roads within their respective counties. Said guide-boards shall contain a suitable inscription indicating the way and naming the approximate or true distance to one or more of the nearest cities, towns, villages, or other known points situated on said road, *provided*, however, that not more than four guide-boards shall be placed within any one unincorporated town or village of any county of this state. They must be of suitable size to contain the inscription, the background of which must be white. The letters contained in the inscription thereon shall be black, at least two inches in height, and legible. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 128.)

1418. *Construction of guide boards.*—Said guide-boards to be securely fastened to posts at least six inches in diameter at the butt, and at least eight feet in length, and planted in the ground so that said post shall be, when erected at least six feet high above the ground. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 128.)

1419. *Penalty for removing, injuring or defacing guide boards.*—Every person who maliciously removes or injures any guide-board erected upon any highway, or any inscription on such, or defaces the same with writing, or in any other manner, is guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than ten (\$10.00) dollars, nor more than twenty-five (\$25.00) dollars and costs of suit. Said fine, when collected, shall be paid into the county treasury for road purposes. [Act approved March 7, 1907, § 3.] (10th Sess. Chap. 128.)

ARTICLE IX.

LAWS OF THE ROAD.

Section 1420. *Meeting vehicles.*

“ 1421. *Employment of drunken drivers prohibited.*

“ 1422. *Owners must discharge driver upon notice.*

“ 1423. *Leaving horses in road unhitched.*

“ 1424. *Recovery of penalties.*

“ 1425. *Owner of carriage liable for injuries done by servant.*

“ 1426. *Traction machines must be run across bridges on planks.*

- Section 1427. Duty of drivers of threshing machines, saw mills, automobiles, etc., when meeting horses,*
 “ 1428. *Penalties.*
 “ 1429. *Regulating speed of automobiles.*
 “ 1430. *Care of persons in control when meeting teams.*
 “ 1431. *Duty when approaching crossings.*
 “ 1432. *Definition of term.*
 “ 1433. *Penalties.*
 “ 1434. *Depositing garbage or dead animals in highway.*

1420. *Meeting vehicles.*—When vehicles meet, the drivers of each must turn seasonably to the right of the center of the highway or road, so as to pass without interference, under the penalty of \$25.00 for every neglect, to be recovered by the party injured. Where the whole breadth of the roadway is not worked, the center of the worked part is the center of the highway. In times of snow where there is a beaten track the center of that is the center of the highway or road. But this section does not apply to vehicles meeting cars running on rails or grooved tracks. [Act approved March 2, 1903, § 81.] (8th Sess. Chap. 44.)

1421. *Employment of drunken drivers prohibited.*—No person must employ, to drive any vehicle for the conveyance of passengers upon any public highway or road, a person addicted to drunkenness, under penalty of \$5.00 for every day such person is in his employ. [Act approved March 2, 1903, § 82.] (8th Sess. Chap. 44.)

1422. *Owner must discharge driver upon notice.*—If any person while actually employed in driving any vehicle is intoxicated to such a degree as to endanger the safety of his passengers, the owner, on receiving from any passenger a written notice of the fact, verified by his oath, must forthwith discharge such driver; and if he has such driver in his service within six months after such notice he incurs a like penalty. [Act approved March 2, 1903, § 83.] (8th Sess. Chap. 44.)

1423. *Leaving horses in road unhitched.*—The driver of any vehicle used to convey passengers must not leave the horses attached thereto while passengers remain in the same, without first fastening the horses, or placing the lines in the hands of some other person, so as to prevent their running, under a penalty of \$20.00 for each offense. [Act approved March 2, 1903, § 84.] (8th Sess. Chap. 44.)

1424. *Recovery of penalties.*—The penalties provided by the three preceding sections are to be recovered by the county attorney of the county in which the offender resides for the use of the county road fund. Any action for a penalty incurred under the last section must be commenced within six months. [Act approved March 2, 1903, § 85.] (8th Sess. Chap. 44.)

1425. *Owner of carriage liable for injuries done by servant.*—The owner of every vehicle running or traveling upon any highway or road for the conveyance of passengers, is liable for all damages to person or property, done by any person in his employment as a driver while driving such vehicle, whether done wilfully or negligently, or otherwise, in the same manner as such driver would be liable. [Act approved March 2, 1903, § 86.] (8th Sess. Chap. 44.)

1426. *Traction machines must be run across bridges on planks.*—All persons owning, controlling, operating or managing threshing machines, steam-engines, saw-mills, or any heavy loads of whatever kind or nature, are required in moving the same over the public highways, to lay down planks not less than one foot wide, three inches in thickness and of sufficient length, on the floors of all bridges and culverts situate on the public highways, while crossing the same, for the wheels of said threshing machines, saw mill, steam engine or other vehicles carrying heavy loads of any kind to run on, *provided* that this section shall not apply to any threshing machine, saw-mill, steam engine, or other vehicle carrying heavy loads not exceeding six tons in weight. [Act approved March 2, 1903, § 87.] (8th Sess. Chap. 44.)

1427. *Duties of drivers of threshing machines, saw mills, automobiles, etc., when meeting horses.*—All persons owning, controlling, operating or managing threshing machines, saw mills, automobiles, or steam engines of any kind, are required in moving the same along the public highways, on meeting any person or persons on horses, mules, or other animals, or in vehicles of any kind, drawn by horses or mules, or other animals, to shut off the steam, come to a halt at a distance of one hundred yards from the place of halting on said highway. [Act approved March 2, 1903, § 88.] (8th Sess. Chap. 44.)

1428. *Penalties.*—Any person or persons violating the provisions of the two preceding sections, shall be guilty of a misdemeanor, and shall on conviction thereof, be fined in a sum not less than five dollars nor more than \$150.00. [Act approved March 2, 1903, § 89.] (8th Sess. Chap. 44.)

1429. *Regulating speed of automobiles.*—No automobile or other motor vehicle shall be run on any public highway outside the limits of a city, fire district or thickly settled or business part of a town at a speed exceeding twenty miles an hour, and no such vehicle shall be run on any public way within the limits of a city, fire district, or of any thickly settled or business part of a town at a speed exceeding eight miles an hour. [Act approved March 7, 1905, § 1.] (9th Sess. Chap. 101.)

1430. *Care of persons in control when meeting teams.*—Every person having control or charge of a motor vehicle or automobile shall, whenever upon any public street or way and approaching

any vehicle drawn by horse, mule, horses or mules or any horse upon which any person is riding, operate, manage and control such motor vehicle or automobile in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse or horses, and to insure the safety and protection of any person riding or driving the same. And if such horse or horses appear frightened, the person in control of such motor vehicle shall reduce its speed, and if requested by signal or otherwise by the driver of such horse or horses, shall not proceed farther towards such animal unless such movement be necessary to avoid accident or injury, or until such animal appears to be under the control of its rider or driver. [*Act approved March 7, 1905, § 2.*] (*9th Sess. Chap. 101.*)

1431. *Duty when approaching crossing.*—Upon approaching a crossing of intersecting ways, and also in traversing the crossing or intersection, the person in control of a motor vehicle shall run it at a rate of speed less than that above specified, and not greater than is reasonable and proper, having regard to the traffic and the use of the intersecting ways. [*Act approved March 7, 1905, § 3.*] (*9th Sess. Chap. 101.*)

1432. *Definition of term.*—The term “motor vehicle” in this Act shall include all vehicles propelled by any power other than muscular power, excepting railroad and railway cars and motor vehicles running only upon rails or tracks. [*Act approved March 7, 1905, § 4.*] (*9th Sess. Chap. 101.*)

1433. *Penalties.*—Any person violating any provision of this Act shall be punished for each offense by a fine not exceeding One Hundred Dollars, or by imprisonment for a term not exceeding sixty days, or by both such fine and imprisonment. [*Act approved March 7, 1905, § 5.*] (*9th Sess. Chap. 101.*)

1434. *Depositing garbage or dead animals in highways.*—It shall be unlawful for any person or persons to dump or leave any garbage or dead animal in or upon any public highway, road, or alley of this state, or within 200 yards of such public highway, road or alley. Any person guilty of a violation of this section shall be fined in a sum not exceeding \$25.00, or be imprisoned in the county jail for a period not exceeding 30 days, or be punished by both such fine and imprisonment in the discretion of the court. [*Act approved March 2, 1903, § 90.*] (*8th Sess. Chap. 44.*)

ARTICLE X.

PRIVATE ROADS, TOLL ROADS AND BRIDGES.

Section 1435. How private roads may be established.

“ 1436. *Toll roads authorized.*

“ 1437. *Condemnation of lands.*

“ 1438. *Hearing of application.*

- Section 1439. Procedure at hearing.*
“ 1440. *Application granted.*
“ 1441. *Road in two counties.*
“ 1442. *Map of road.*
“ 1443. *Change of road.*
“ 1444. *Method of condemnation.*
“ 1445. *Survey of plan to be filed.*
“ 1446. *Persons exempt from toll.*
“ 1447. *Bridges and roads to be kept in repair.*
“ 1448. *County Commissioners shall fix rate of tolls.*
“ 1449. *Use of public road.*
“ 1450. *Character of bridges.*
“ 1451. *Navigation must not be obstructed.*
“ 1452. *County may purchase.*
“ 1453. *Action of commissioners.*
“ 1454. *Appeal.*
“ 1455. *Costs.*
“ 1456. *Penalties.*

1435. (§ 2780.) *How private roads may be established.*—Private roads may be established in the manner provided in title VII., part III., Code of Civil Procedure. But in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof must be first determined by a jury and such amount together with the expenses of the proceeding must be paid by the person to be benefitted.

1436. (§ 2781.) *Toll roads authorized.*—Hereafter it shall be lawful for any person or persons, company or corporation, to construct and maintain in this state, toll roads and toll bridges, in the manner and for the purposes, and under the restrictions and regulations provided in this act. [Act approved March 2, 1893.]

1437. (§ 2782.) *Condemnation of lands.*—If all lands necessary for the road bed, and approaches to the bridges, and other purposes, are not otherwise acquired as hereinafter provided, the person or persons, company or corporation, proposing to construct a toll road or bridge, in any part of the county, must publish a notice in some newspaper published therein, and if none, then in the newspaper nearest thereto, once in each week for four successive weeks, specifying the character of the road or bridge, the termini of such road, and each town, city or village, through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete on the day specified therein application must be made to the board of commissioners of the county for authority to take the necessary lands and to construct the road or bridge described in the notice. [Act approved March 2, 1893.]

1438. (§ 2783.) *Hearing of application.*—The application may be heard at any regular meeting of the board, or at a special meeting called for that purpose as provided by law. [*Act approved March 2, 1893.*]

1439. (§ 2784.) *Procedure at hearing.*—On the hearing all residents of the county and others interested, may appear and be heard. The board may take testimony upon such hearing, and may adjourn the hearing from time to time. [*Act approved March 2, 1893.*]

1440. (§ 2785.) *Application granted.*—If it appear to the board of commissioners that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the person or persons, company or corporation, to take the real property necessary. The board of commissioners shall keep a record of all proceedings. [*Act approved March 2, 1893.*]

1441. (§ 2786.) *Road in two counties.*—If the route of the road or the proposed bridge extends into or passed through more than one county, the application must specify the county, or counties, into which the road or proposed bridge extends or passes through. [*Act approved March 2, 1893.*]

1442. (§ 2787.) *Map of road.*—The person or persons, company or corporation, proposing to construct such road or bridge, shall cause their surveyor or engineer to make a map of the proposed bridge, or drawing and specifications of the proposed bridge, which when approved by the board of commissioners must be filed in the office of the county clerk. [*Act approved March 2, 1893.*]

1443. (§ 2788.) *Change of road.*—Whenever a road is constructed in accordance with the foregoing provisions, the same may be extended or altered or the route thereof changed, or branches constructed thereto in the manner herein provided. [*Act approved March 2, 1893.*]

1444. (§ 2789.) *Method of condemnation.*—Lands necessary for the purpose of the road or appurtenances, or the bridge and approaches thereto, may be acquired by purchase or condemnation, and if by condemnation it shall be condemned in the manner provided for condemnation of lands by railroad corporations in accordance with the provisions of title XV., first division, general laws, compiled statutes of Montana. Lands within any highway may be granted by the board of commissioners, or town or city authorities on such terms and for such sums as may be agreed upon. [*Act approved March 2, 1893.*]

1445. (§ 2790.) *Survey or plan to be filed.*—When the person or persons, company or corporation has obtained the lands by purchase or agreement, necessary upon which to construct the road or approaches of the bridge, the road or bridge may be con-

structed without making the application to the board of county commissioners as hereinbefore provided; but before proceeding to do so, an accurate survey of the road with the termini thereof and the county or counties through which the same passes, or if it be a bridge a description of the site, name of the stream, the county or counties where it is proposed to construct it, with proper plans and specifications, shall be certified to and be filed in the office of the county recorder of the county or counties where said road or bridge is situated, and such road or bridge shall be constructed according to such survey of such road, or plans and specifications of such bridge. [*Act approved March 2, 1893.*]

1446. (§ 2791.) *Persons exempt from toll.*—Whenever any road or bridge shall be constructed as provided in this act, toll gates may be erected and tolls collected as provided in this act; *Provided*, The following persons and no other are exempt from payment of toll on all toll roads and toll bridges in this state.

1. Persons going to and from funerals, and all funeral processions.

2. Troops in actual service of the state or of the United States, and persons going to and from militia training which by law they are required to attend.

3. Persons going to or from the court house in obedience to subpoena in a criminal action.

4. School teachers and children attending school within three miles of their parental or boarding house. [*Act approved March 2, 1893.*]

1447. (§ 2792.) *Bridges and roads to be kept in repair.*—Every toll road or bridge constructed under the provisions of this act shall be kept in good state of repair and in safe condition for public travel, and whenever the owner of any toll road or bridge constructed or operated under the provisions of this act shall permit the same to be out of repair or safe condition for public travel the county commissioners of the county or counties in which said road or bridge is situated, may take possession of said road or bridge or suspend the operation thereof until the same shall be placed in repair by the owner thereof. [*Act approved March 2, 1893.*]

1448. (§ 2793.) *County commissioners shall fix rate of tolls.*—The board of county commissioners of each county, through which any toll road passes or any toll bridge is situated, shall grant a permit to operate the same and shall fix the rate of toll which may be charged by the owner of such road or bridge for the portion of the road or bridge in each particular county, which rate shall not be diminished oftener than every two years, and may by order, regulate and govern the amount of weight and number of animals that may be driven on to a toll road at any one time, and prescribe rules for the government of the draws or swings and

attendance of the same, and prescribe penalties for the disobedience of such rules. [*Act approved March 2, 1893.*]

1449. (§ 2794.) *Use of public road.*—The person or persons, company or corporation constructing a bridge under the provisions of this act may use, in such manner as prescribed by the board of county commissioners, so much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll house or houses. [*Act approved March 2, 1893.*]

1450. (§ 2795.) *Character of bridges.*—All bridges constructed under this act crossing navigable streams must be so constructed as not to obstruct navigation, and every bridge erected under the provisions of this act, must have good substantial railing or siding, at least four and one-half feet high. [*Act approved March 2, 1893.*]

1451. (§ 2796.) *Navigation must not be obstructed.*—The owner of any toll bridge across any navigable or navigated stream must at all times keep the channel above and below the bridge clear from all deposits occasioned by its erection and prejudicial to such navigation, and is liable to pay to all persons unreasonably hindered or delayed in passing such bridge with rafts or vessels all damages sustained thereby. [*Act approved March 2, 1893.*]

1452. (§ 2797.) *County may purchase.* At any time after the completion of any road or bridge, constructed either under the provisions of this act, or constructed before the passage of this act, the county within which the road or bridge, or any part thereof, is located, may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons, three to be appointed by the board of county commissioners of the county, three by the owner of the road or bridge, and the seventh by the judge of the district court of the district in which said county is situate, who must estimate the fair cash value of the road or bridge, and make report thereof, under oath, to the board of county commissioners; *Provided*, That if the owner or owners of any road or bridge refuse to appoint three disinterested persons as commissioners, as provided in this section, within thirty days after service of notice from the board of county commissioners requesting such appointment, the judge of the district court of the district in which said county is situate, shall appoint three disinterested persons, in lieu of the three commissioners which the said owner or owners have failed to appoint. If, within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road or bridge, or his authorized managing agent, in lawful money, the right of the owner to take tolls on the road or bridge is terminated, and the road or bridge becomes the property of the county. [*Act approved Feby. 26, 1895.*]

1453. (§ 2798.) *Action of commissioners.*—A majority of the commissioners mentioned in the preceding section constitutes a quorum, and the concurrence of a majority in making the estimate and award is binding upon the owner of the road or bridge if approved by the board of county commissioners. The commissioners must make their report within thirty days after their appointment, and if approved, the tender of the amount of the appraisement and award must be made by the county treasurer; whether the owner conveys the road or bridge to the county or not, the report and tender operate as a conveyance to the county of the road or bridge and all its incidentals and appurtenances. [*Act approved March 2, 1893.*]

1454. (§ 2799.) *Appeal.*—Any person, company or corporation, being a party to any proceeding under this act, may appeal to the district court of the proper county from any order made by the county commissioners under § 1448 (2793) hereof, as well as from any award which may be made under the provisions of this act. Said appeal shall be taken by serving a notice of such appeal upon the adverse party, and filing the original with the clerk of the board of county commissioners, and also by filing with the same officer a good and sufficient bond in the sum of three hundred dollars to be approved by the chairman of the board of county commissioners, conditioned for the prosecution of said appeal with effect and for the payment of all costs that may be awarded on the appeal not exceeding three hundred dollars. Said bond and notice to be filed within ten days from the making of such order or rendering of such award, and thereupon all papers, records, and proceedings had and done in relation thereto, shall be by said clerk of the board of county commissioners forthwith transmitted to the clerk of the district court of the proper county, and thereafter the same shall be heard de novo and said district court shall have full power to make and enter such order, award or judgment as the board of county commissioners or other commissioners authorized by this act might or could make in the first instance. [*Act approved March 2, 1893.*]

1455. (§ 2800.) *Costs.*—Costs may be allowed or not, and if allowed may be apportioned between the parties on the same or adverse sides, in the discretion of the court. [*Act approved March 2, 1893.*]

1456. (§ 2801.) *Penalties.*—Any person who shall in any way obstruct or interfere with any toll road or bridge constructed or operated under the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than ten or more than one hundred dollars, or by imprisonment in the county jail for not less than ten or more than thirty days, or by both such fine and imprisonment in the discretion of the court. [*Act approved March 2, 1893.*]

ARTICLE XI.

FERRIES.

- Section 1457. *Ferries between counties.*
 “ 1458. *Notice of application.*
 “ 1459. *Application for leave and notice.*
 “ 1460. *The hearing.*
 “ 1461. *Duty of board of commissioners.*
 “ 1462. *Report of owner or keeper of ferry.*
 “ 1463. *Power and duty of commissioners in regard to ferry.*
 “ 1464. *All passengers must be accommodated.*
 “ 1465. *Penalties recovered, how paid.*
 “ 1466. *Bond to be given.*
 “ 1467. *When ferry unites two counties, tax how to be paid.*
 “ 1468. *Interested commissioner must not act.*
 “ 1469. *Ferry within one mile of another, when.*
 “ 1470. *Owner of land preferred.*
 “ 1471. *How lands acquired for use of ferry.*
 “ 1472. *Must post rates of toll.*
 “ 1473. *Keep banks in repair.*

1457. (§ 2820.) *Ferries between counties.*—When authority to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of that county situated on the left bank descending such river, creek or slough.

Pool v. Simmons, 134 Cal. 622; 66 Pac. 872.

1458. (§ 2821.) *Notice of application.*—The board of commissioners must not grant authority to erect a toll ferry until the notice of such intended application has been given as required in this article.

1459. (§ 2822.) *Application for leave and notice.*—Every applicant for authority to erect and take tolls on a public ferry must publish notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county, and by posting three notices in three public places in the township for four successive weeks, specifying the location and the time and place when and where the application will be made. After notice is given application must be made in writing under oath to the board of commissioners of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

1460. (§ 2823.) *The hearing.*—At the hearing, proof of giving the notice, required by the preceding section, must be made,

and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, and by reason of the ownership of the landing, or failure of the owner thereof to apply is entitled thereto, authority to erect and take tolls on the ferry may be granted to him for the term of ten years.

1461. (§ 2824.) *Duty of board of commissioners.*—The board of commissioners granting authority to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the ferry for the benefit of the county, and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof.
2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three dollars nor over one hundred dollars per month, payable annually.
3. Fix the rate of tolls which may be collected for crossing the ferry.
4. Make all necessary orders relative to the construction, erection, and business of ferries which they have by law the power to make. The board of commissioners may, at any time they see fit, authorize and maintain fords across any water within any distance of any ferry.

1462. (§ 2825.) *Report of owner or keeper of ferry.*—Every owner or keeper of a ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection and equipment of the ferry.
2. The repairs made during the preceding year and the actual cost thereof.
3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business.
4. The amount of tolls collected, and
5. The estimated actual cash value of the ferry, exclusive of the franchise.

1463. (§ 2826.) *Power and duty of commissioners in regard to ferry.*—The board of commissioners may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character and how propelled.
2. The number of hands, boatmen or ferrymen, to be employed and rules for their government.
3. When and under what circumstances to make trips in the night time.
4. Who may be ferried free of toll.

5. In what cases of danger or peril not to cross.
6. Penalties for violation of regulations.
7. In case of steamboats, the rate of speed.
8. The method of and preference in loading and crossing; and
9. How and by whom action must be brought to recover penalties.

1464. (§ 2827.) *All passengers must be accommodated.*—Subject to the foregoing regulations ferry keepers must make trips to accommodate all passengers who desire to cross, and any failure so to do subjects the franchise to forfeiture, by a proper proceeding for that purpose.

1465. (§ 2828.) *Penalties recovered, how paid.*—Penalties recovered under this article must be paid to the county treasury for the use of the general road fund of the county.

1466. (§ 2829.) *Bond to be given.*—The bond required of the owner or keeper of the ferry must be in the sum fixed by the board of commissioners with one or more sureties and conditioned that the ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the state and all legal orders of the board of commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be approved by the board of commissioners.

1467. (§ 2830.) *When ferry unites two counties, tax how to be paid.*—The license tax for a ferry connecting two counties must be paid to the treasurer of the county granting it, and the license issued, but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the ferry is located one-half of the sum so received annually.

1468. (§ 2831.) *Interested commissioner must not act.*—When a county commissioner is interested in an application to erect, construct, or take tolls on a ferry, he must not act in any such matters.

1469. (§ 2832.) *Ferry within one mile of another, when.*—No toll ferry must be established within one mile immediately above or below a regularly established ferry, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll ferry, as in this section provided, must be served upon the proprietor of the ferry already established at least ten days prior thereto, giving the time and place and grounds of such application.

1470. (§ 2833.) *Owner of land preferred.*—The owner of the land on either of the waters to be crossed, and the owner of the land on the left bank descending, over the owner of the land on the right bank, is entitled to preference in procuring authority to construct a ferry; but where such owner fails or neglects to apply for such authority within a reasonable time after the necessity therefor arises, the board of commissioners may grant such authority to another.

1471. (§ 2834.) *How lands acquired for use of ferry.*—When there are lands necessary for the construction, erection, or use of such ferry which cannot be procured by agreement between the owner and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

1472. (§ 2835.) *Must post rates of toll.*—The owner of every ferry must have the rates of toll as fixed by the board of commissioners, printed or written, and posted up in some conspicuous place on or near the ferry.

1473. (§ 2836.) *Keep banks in repair.*—All ferry keepers must keep the banks of the streams or waters at the landings of their ferries graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

TITLE VII.

GENERAL POLICE OF THE STATE.

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| CHAPTER | I. REGULATIONS CONCERNING PUBLIC HEALTH AND SAFETY. |
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CHAPTER I.

REGULATIONS CONCERNING PUBLIC HEALTH AND SAFETY.

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 II. MILK AND MEAT INSPECTION.
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ARTICLE I.

BOARDS OF HEALTH.

- Section 1474. *Creation of state board of health.*
 “ 1475. *Powers and duties of board.*
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 tions.*
 “ 1478. *Officers of board.*
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 quested by board.*
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- “ 1500. *Definition of the term “communicable disease.”*
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- “ 1509. *Sewage system must be approved by state board of health.*
- “ 1510. *Secretary authorized to act for state board in emergency cases.*
- “ 1511. *Penalties.*

1474. *Creation of state board of health.*—A Board is hereby established which will be known under the name and style of the “State Board of Health of Montana;” it shall consist of seven members, as follows; three members, all of whom shall be experienced physicians, legally authorized to practice medicine and surgery in the State of Montana, to be appointed by the Governor, with the advice and consent of the Senate, and a Secretary as provided for in Section five of this Act; these four, together with the Governor, Attorney General and the State Veterinarian, who shall be ex-officio members, shall constitute the State Board of Health of Montana. The persons so appointed by the Governor shall hold office for four years, *provided* that those first appointed shall be so classed by the Governor that the term of two shall ex-

pire on the first day of January in every second year; thereafter the Governor, with the advice and consent of the Senate, shall biennially appoint two members in the place of those two whose term shall so expire, who shall hold office for four years, *provided* that all vacancies shall be likewise filled by appointment by the Governor, by the advice and consent of the Senate; appointment made when the Senate is not in session shall take effect immediately and shall be presented for confirmation at the next ensuing session. [Act approved March 6, 1907, § 1.] (10th Sess. Chap. 110.)

1475. *Powers and duties of board.*—The State board of health shall have general supervision of the interests and health and life of the citizens of the State. They shall study the vital statistics of the State and endeavor to make intelligent use of the records of deaths and sickness among the people; they shall make sanitary investigations and inquiries regarding the causes of disease and especially communicable diseases and epidemics; the causes of mortality, and the effects of localities, employments, conditions, ingesta, habits and circumstances of the health of the people; they shall gather such information in respect to all these matters as they may deem proper for diffusion among the people; they shall make an inspection once in each year, and at such other times as they may be directed to do so by the Governor, of all public institutions and make a report as to their sanitary conditions, with suggestions and recommendations to their respective boards of directors or trustees; and it shall be the duty of the official in the immediate charge of such institutions to furnish all the facilities necessary for a thorough investigation; they shall, when requested or when they shall deem it best, advise officers of the Government, or other Boards within the State, in regard to location, drainage, water supply, disposal of excreta, heating and ventilation of any public institution or building; they shall have general oversight and direction of the enforcement of the statutes respecting the preservation of the health and the prevention of the spread of communicable diseases; they shall have general supervision of the work of local and county boards of health, hereinafter defined, and they shall, at each session of the legislature, submit through the Governor a full report of their investigations and such suggestions and recommendations as they may deem proper. [Act approved March 6, 1907, § 2.] (10th Sess. Chap. 110.)

1476. *Meetings of Board.*—The State Board of Health shall meet semi-annually at Helena, and at such other times and places as they may deem expedient. Suitable accommodations for the meetings of said Board and office room for the secretary shall be provided at the State Capitol. A majority shall be a quorum for the transaction of business. They shall choose one of their

members to be president and may adopt all necessary rules and by-laws subject to the provisions of this Act. Special meetings of the Board may be called at any time by the president, through the secretary, upon five days notice in writing. [*Act approved March 6, 1907, § 3.*] (10th Sess. Chap. 110.)

1477. *Power to make and enforce rules and regulations.*—The State Board of Health shall have power to promulgate and enforce such rules and regulations for the better preservation of the public health in contagious and epidemic diseases as it shall deem necessary, and also regarding the causes and prevention of diseases, and their development and spread; and if any person or corporation refuses, after notice in writing from the secretary of the State Board of Health, or from any local or county board of health, of such rules and regulations to comply therewith, within a reasonable time, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in a sum not less than Ten nor more than One Hundred Dollars with costs of prosecution; and it shall be the duty of the secretary of the State Board of Health to prepare and distribute to local boards of health, physicians and other persons requesting them, such printed circulars as the Board may direct, and such rules and regulations as the Board may promulgate as aforesaid. [*Act approved March 6, 1907, § 4.*] (10th Sess. Chap. 110.)

1478. *Officers of board.*—At the first meeting of the State Board of Health, or as soon thereafter as a suitable and competent person can be secured, the Board shall elect a Secretary, who shall be an educated physician, experienced in sanitary science, and qualified to practice medicine in the State of Montana, and who by virtue of such election shall be a member of the board and its executive officer and the State Health Officer. The Board may elect one of their own number such secretary, in which case the Governor shall appoint another member to complete the full number of the said Board, as hereinbefore provided. [*Act approved March 6, 1907, § 5.*] (10th Sess. Chap. 110.)

1479. *Duties and compensation of secretary.*—The Secretary shall hold office for four years, but he may be removed for cause at any duly organized meeting of the board upon a majority vote of the members present; he shall perform all the duties required by law or by the rules and regulations of the board, he shall keep a record of the transactions of the board, shall have custody of the books, records, documents and other property belonging to the board; he shall, as far as practical, communicate with other State Boards of Health and with local and county boards of health within the State; he shall keep on file all reports received from such local and county boards of health and all correspondence of the office appertaining to the business of the board. He shall prepare blank forms of return and such instructions as

shall be necessary, and forward them to the local and county boards of health throughout the State; he shall supervise the work of all local and county health officers, and when any local or county health officer shall fail to properly perform the duties required of him, the secretary of the State Board of Health shall notify such local or county board of health, and he may file complaint against such delinquent health officer with a Justice of the Peace, as the exigencies of the case may demand; he shall inspect the records of each local and county health officer at least once in each year; he shall whenever requested by any local or county health officer, or when he may deem it necessary, visit any district to investigate the cause of any existing disease or sanitary condition; he shall, through an annual report, and otherwise, as the board may direct, disseminate such information as he may collect and general instructions regarding sanitary measures and means of preventing the spread of communicable diseases; he shall receive from the State of Montana, in monthly payments, an annual salary of Three Thousand Dollars, (\$3000.00), to be paid out of the general fund of the State. [Act approved March 6, 1907, § 6.] (10th Sess. Chap. 110.)

1480. *Compensation of members of board.*—Each member of the State Board of Health, except the secretary and ex-officio members, shall receive the sum of Five Dollars per day for each day's attendance at the meetings of the board, and his necessary traveling expenses. The claims of the members for such per diem and traveling expenses shall be presented to and audited and allowed by the State Board of Examiners, in the manner now provided by law for the allowance of similar claims of other state officers, *provided*, such expenses in the aggregate shall not exceed the annual sum of Two Thousand Dollars, (\$2000.00). [Act approved March 6, 1907, § 7.] (10th Sess. Chap. 110.)

1481. *Corporations to furnish information when requested by board.*—In order to afford the better advantage for obtaining knowledge to be incorporated with that collected through special investigations and other sources, all officers of the state, the physician of all incorporated companies, and the president or agent of any company chartered, organized or transacting business under the laws of this state, as far as it is practical, shall furnish to the State Board of Health any information bearing upon public health which may be requested by said board, for the purpose of enabling it better to perform its duties of collecting and distributing useful information on this subject. [Act approved March 6, 1907, § 8.] (10th Sess. Chap. 110.)

1482. *Inspection and regulation of school houses, churches and places of public resort.*—The State Board of Health shall prepare and issue to the local and county boards of health regulations for the lighting, heating and ventilating of schoolhouses, and shall cause sanitary inspection to be made of schoolhouses,

churches and all places of public resort, in towns or cities of one thousand or more inhabitants, and make such regulations concerning the same as it may deem necessary for the safety of the persons who may attend school or services therein or resort thereto. And all schoolhouses, churches or public buildings hereafter erected in such towns or cities shall conform to the regulations of the State Board of Health in respect to all sanitary conditions; and all persons, corporations or committees intending to erect any public building hereinbefore named, in towns, or cities, of one thousand or more inhabitants, shall submit plans thereof, so far as to show the method of heating, ventilating, plumbing and sanitary arrangements, to the secretary of the State Board of Health and secure his approval thereof, or the approval of the State Board of Health on appeal from the decision of its secretary, before erecting said building, and shall conform strictly to all the requirements of the said board in the respects aforesaid, and any person, corporation or committee that shall erect any such building without such approval, and without complying with such requirements, shall be guilty of a misdemeanor; and shall also make such building conform to the requirements of said board, before the same shall be used for any of the purposes above mentioned; and any such use of said building until such requirements have been complied with shall be a misdemeanor. [*Act approved March 6, 1907, § 9.*] (*10th Sess. Chap. 110.*)

1483. *Public buildings found in unsanitary condition may be declared a public nuisance.*—When any schoolhouse, church, theatre or other public building in the state shall, on inspection by a local, county, or state health officer, be found to be in such unsanitary condition as to endanger the health of those who may frequent the same, such health officer shall give to the owner, or those in charge of such building, notice to place the same in proper sanitary condition in such manner as he shall direct and within a reasonable time, and should the owner, agent or other person in charge of such building fail, neglect or refuse to place the said building in proper sanitary condition, in such manner as shall be directed and within the time specified in said notice, then such building shall be deemed a public nuisance and the local or county health officer or the secretary of the State Board of Health shall institute action against the same, in the manner now provided by law for the abating of a public nuisance. [*Act approved March 6, 1907, § 10.*] (*10th Sess. Chap. 110.*)

1484. *Local boards of health.*—Each incorporated city or town in the State shall have a local board of health, the same being designated in this act as the “Local Board.” Said local board shall consist of three members to be appointed by the municipal authorities of the town or city, and removable at their pleasure, one of whom shall be a physician, legally qualified to practice medicine

and surgery in the State; the Board shall elect one of its members as Secretary; *provided*, that any incorporated town of less than five thousand inhabitants, may, by written notice to the State Board of Health, and to the county board of health of the county in which said town is located, place itself under the care of the county board of health, in which case the county health officer, as hereinafter provided for, shall have the same authority within the incorporate limits of such town as he has in the county outside of corporate limits; *provided* that such incorporated town shall pay all expenses incurred in enforcing sanitary measures and quarantines within its corporate limits. If the municipal authorities of any incorporate city or town shall fail to appoint a board of health as required above, within thirty days after having been notified of such requirement by the Secretary of the state board of health, then the state board of health may appoint a health officer for such town or city, and the health officer thus appointed by the state board of health shall have all the powers, receive all the emoluments and perform all the duties required of a local health officer appointed by the municipal authorities. [*Act approved March 6, 1907, § 11.*] (10th Sess. Chap. 110.)

1485. *Salaries of local health officer.*—The salary of each local health officer shall be determined by the municipal authorities of the respective city or town *provided* that such salaries shall not exceed, in counties of the first, second and third classes, two thousand (\$2000.00) dollars per annum, and in counties of the fourth and fifth classes, twelve hundred (\$1200.00) dollars per annum, and in counties of the sixth, seventh and eighth, not to exceed six hundred (\$600.00) dollars per annum, *and provided further*, that in all cases the State Board of Health shall have supervisory control over the action of all local county, city or district health officers, who shall in all respects, be subject to the direction of the State Board. [*Act approved March 6, 1907, § 12.*] (10th Sess. Chap. 110.)

1486. *Meetings of local board of health.*—Each local board of health shall hold regular quarterly meetings, and such other meetings as may be deemed expedient. The Secretary shall keep accurate records, in a book provided therefor, of the proceedings of such meetings. He shall keep accurate records of all communicable diseases reported to him, and for this purpose each local board of health shall provide, at the expense of the city or town a book printed in proper blank form for the notation of such facts and data as may be prescribed by the regulations of the State Board of Health. These records shall be the property of the city or town and must be turned over by the Secretary to his successor in office. [*Act approved March 6, 1907, § 13.*] (10th Sess. Chap. 110.)

1487. *Duties of local health officer.*—The local health officer shall make sanitary inspection whenever and wherever he has

reason to suspect that anything exists that may be detrimental to the public health. He shall, as secretary of the local board of health, by a written instrument under his hand, order the destruction, prevention, and removal, within a specified time, of all nuisances, sources of filth, or causes of sickness as directed by the local board of health, or order all public buildings, such as schoolhouses, churches, theatres, or other places where people congregate in considerable numbers to be closed in time of epidemic or in the face of serious or unusual sickness, which in his judgment, and approval in writing by the secretary of the state board of health and safety may require the same, and may forbid and prevent the assembling of the people in any place when the public health and safety demands the same. [*Act approved March 6, 1907, § 14.*] (*10th Sess. Chap. 110.*)

1488. *Penalties for failure to comply with orders of board.*—If any person or corporation shall neglect or refuse to comply with any written order of a local, county or state health officer, made and promulgated by either of them under this Act, within a reasonable time, to be designated in the notice, such person or corporation shall be guilty of a misdemeanor. In case of such neglect or refusal to comply with such order, the local, county or state Board of Health may cause it to be complied with at the expense of the town, city, or county, and such expenses shall be recovered from the person or corporation whose legal duty it was to comply with such order, by a civil action brought in the name of such town, city or county. [*Act approved March 6, 1907, § 15.*] (*10th Sess. Chap. 110.*)

1489. *Powers of local boards of health.*—The local or county board of health shall have power to abate all nuisances affecting the public health, to destroy, prevent and remove all sources of filth and causes of sickness or disease; to guard against the introduction of communicable diseases by the exercise of proper and vigilant medical inspection and control of all persons and things in their respective districts, which, for any reason, are liable to communicate contagious diseases. They shall also have authority to establish and maintain, at the expense of their respective city, town, or county, isolation hospitals, where patients suffering from smallpox or other very dangerous, contagious or infectious disease may be properly quarantined and cared for, when, in their judgment, they cannot be properly quarantined and cared for elsewhere. Towns, cities and counties must establish and maintain such isolation hospitals when directed so to do by the state board of health, and for this purpose they may secure by purchase or otherwise suitable building sites, and cities, towns and counties may combine for the purpose of building, equipping and maintaining such hospitals. The local or county boards of health shall also have power and authority to require the isolation of persons or things infected with or exposed to infectious or

contagious diseases, provide suitable places for the reception thereof, and, if necessary, furnish medical treatment and care for such sick persons at the expense of the city, town or county; to prohibit and prevent all intercourse or communication with, or use of infected premises, places or things, and require and provide means for the thorough fumigation, purification, disinfection, and cleansing of the same before intercourse therewith or use thereof shall be allowed. When any contagious or infectious disease exists or is believed to exist on any premises within his jurisdiction the local or county health officer shall immediately place such premises under quarantine, in accordance with the rules and regulations of the State Board of Health, and shall maintain such quarantine in accordance with such rules and regulations. At the expiration of the period of quarantine, the local or county health officer shall personally supervise the disinfection, fumigation, and cleansing of all persons or things which have been exposed to the contagion, and all disinfecting, fumigating and cleansing shall be done in accordance with the rules and regulations of the state board of health, and at the expense of the city, town, or county. [*Act approved March 6, 1907, § 16.*] (*10th Sess. Chap. 110.*)

1490. *Police officer must assist health officer when requested.*—Any local, county or state health officer may call upon all sheriffs, constables, or other public officers to assist them in the discharge of their duties, and if any such officer, so called upon, shall neglect or refuse to render such service, he shall be guilty of a misdemeanor, and subject to removal from office. [*Act approved March 6, 1907, § 17.*] (*10th Sess. Chap. 110.*)

1491. *Interference with health officer; penalty.*—Any person who shall attempt to hinder, or who shall hinder the work of a local, county or state health officer, or who shall remove, deface or obscure any placard or notice posted under the authority or by the direction of such officer, or who shall violate any quarantine regulation is guilty of a misdemeanor. [*Act approved March 6, 1907, § 18.*] (*10th Sess. Chap. 110.*)

1492. *County boards of health.*—There is hereby established in each county a board of health which is designated in this Act as the "County Board of Health," which shall consist of the board of county commissioners, and one physician legally authorized to practice medicine and surgery in this state, who must be appointed by the board of county commissioners. Said physician, when so appointed shall be ex-officio secretary of the county board of health and the county health officer, and shall hold office at the pleasure of the board. The county health officer shall have the same powers and perform the same duties in the county of his appointment, outside of the limits of incorporated towns or cities, as are hereinabove provided for a local health officer within the

corporate limits of a town or city, and his salary shall be fixed by the board of county commissioners, at an amount commensurate to the work devolving upon him, and when such county health officer, in the actual discharge of his official duties, is required to travel greater than two miles from the county seat of the county he represents, he shall receive his actual traveling expenses. [*Act approved March 6, 1907, § 19.*] (*10th Sess. Chap. 110.*)

1493. *Appointment of county health officer.*—Should any board of county commissioners fail, neglect or refuse to appoint a county health officer, as herein provided, for a period of thirty days after having been notified in writing by the secretary of the state board of health so to do, then, and in that event, the state board of health may appoint such health officer, and he shall have the same powers and perform the same duties, and receive the same emoluments as though appointed by the action of the board of county commissioners. [*Act approved March 6, 1907, § 20.*] (*10th Sess. Chap. 110.*)

1494. *Duties of county boards of health.*—Each county board of health shall hold regular quarterly meetings, immediately after the adjournment of each regular quarterly meeting of the board of county commissioners, and at such other times as they may deem necessary, and may adopt all needful rules and regulations for the government of their respective bodies, subject to the provisions of this Act; they shall establish such sanitary rules and regulations for their county for the prevention of the spread of disease as they may deem necessary, *provided* that no such rule shall conflict with the rules and regulations of the state board of health, and any person who shall fail, neglect or refuse to comply with such rules and regulations shall be guilty of a misdemeanor and shall, on conviction, be fined not less than Ten Dollars and not more than Fifty Dollars for such offense. [*Act approved March 6, 1907, § 21.*] (*10th Sess. Chap. 110.*)

1495. *Duty of county health officer.*—It shall be the duty of each local and county health officer, immediately upon appointment, to transmit to the secretary of the state board of health his name, date of appointment, post-office address, together with the names and postoffice addresses of the members of the board of health of which he is secretary. He shall on or before the fifth day of each month, transmit to the secretary of the State Board of Health, on blanks provided therefor, a complete report of all communicable diseases reported to him during the previous month, giving all the details regarding each case as indicated by the blank forms provided by the state board of health. He shall on or before the first day of December of each year, make a report to the local or county board of health of which he is secretary, setting forth the general sanitary conditions within his district during the

year ending the last day of November, and such other information as the state board of health may call for; and a copy of this report must be transferred immediately to the secretary of the state board of health. Any local or county health officer who shall fail, neglect or refuse to make either the above mentioned monthly or annual reports, within the time specified in this section, shall forfeit the sum of Two Dollars for each day he is delinquent, which amount shall be deducted from his salary; and the secretary of the state board of health shall notify the chairman of the local or county board of health of the number of days its secretary is delinquent. [*Act approved March 6, 1907, § 22.*] (*10th Sess. Chap. 110.*)

Stockton v. Weber, 98 Cal. 438; 33 Pac. 332.

1496. *Failure of county health officer to perform duty; penalty.*—Any local or county health officer who shall fail, neglect or refuse to comply with any of the requirements of this act, or of the rules and regulations of the state board of health, shall be subject to a fine of not more than Two Hundred Dollars (\$200.00). [*Act approved March 6, 1907, § 23.*] (*10th Sess. Chap. 110.*)

1497. *Expenses and salary of local health officer.*—All necessary expenses incurred by any local board of health and the salary of each local health officer, shall be paid from the treasury of the respective city or town, on representation of an itemized and verified account; and all expenses incurred by a county board of health in the enforcement of the provisions of this Act, shall be paid from the general fund of the respective counties, on presentation of an itemized and verified account. (*Act approved March 6, 1907, § 24.*) (*10th Sess. Chap. 110.*)

1498. *Contagious disease; restrictions of travelers.*—The State Board of Health shall have the power, and it shall be their duty to issue and enforce reasonable rules for the restriction and prohibition of any person or persons suffering from a communicable, infectious or contagious disease traveling on public conveyance, and shall issue reasonable rules and regulations for the disinfection of passenger cars or any other public conveyance in which any person or persons, suffering from contagious, infectious or communicable disease has been traveling. [*Act approved March 6, 1907, § 25.*] (*10th Sess. Chap. 110.*)

1499. *Rules and regulations for transportation of dead bodies.*—The State Board of Health shall make all needful rules and regulations for the transportation of dead bodies, and such rules and regulations shall, so far as shall be deemed practical, be in conformity with similar rules and regulations now in force in other North American States and Provinces, and to this end they may establish a system of licensing embalmers and undertakers. [*Act approved March 6, 1907, § 26.*] (*10th Sess. Chap. 110.*)

1500. *Definition of the term "communicable disease."*—The term "communicable disease" as used in this act, shall be understood to include the following diseases: small-pox, diphtheria, membranous croup, so-called, scarlet fever, sometimes called scarlet rash or scarlatina, cholera, bubonic plague, yellow fever, "spotted" or "tick" fever, typhus fever, enteric or typhoid fever, cerebro spinal meningitis and measles. [Act approved March 6, 1907, § 17.] (10th Sess. Chap. 110.)

1501. *Duty of householder to notify board of health of presence of communicable disease.*—Whenever any householder knows or has reason to believe that any person within his family or household has any communicable disease, he shall immediately give notice thereof to the health officer of the town or city in which he resides, if within the corporate limits of a town or city, or to the county health officer if without the corporate limits of a town or city; and such notice shall be given at the office of the local or county health officer, within the shortest possible time and by the most direct means of communication. [Act approved March 6, 1907, § 28.] (10th Sess. Chap. 110.)

1502. *Duty of physicians.*—Whenever any physician knows that any person whom he is called upon to visit is infected with any communicable disease, such physician shall immediately give notice of such disease to the local health officer, if within the corporate limits of a town or city, or to the county health officer if without the corporate limits of a town or city. [Act approved March 6, 1907, § 29.] (10th Sess. Chap. 110.)

1503. *Duty of health officer to file complaint of violation of act.*—It shall be the duty of each local or county health officer in the state, who shall have knowledge of any violation of this Act, occurring within his district to forthwith file a complaint with a justice or magistrate having jurisdiction. [Act approved March 6, 1907, § 30.] (10th Sess. Chap. 110.)

1504. *Compulsory vaccination of school children.*—Whenever small-pox exists or is threatened in any part of the state the state board of health shall have authority to require all persons frequenting any schoolhouse within the infected or threatened district to be vaccinated or to present evidence of a successful vaccination with cow-pox, and no person shall be permitted to enter any schoolhouse within the district included in the order of the state board of health unless such requirements are complied with. [Act approved March 6, 1907, § 31.] (10th Sess. Chap. 110.)

1505. *Quarantine measures.*—The state board of health, in case of danger of infection from small-pox, or any other infectious or contagious disease, dangerous to the public health, may institute and enforce quarantine measures against any state as it may deem necessary, and they shall enforce such quarantine measures against any city or county as they may deem necessary in order to prevent

the spread of dangerous, infectious or contagious diseases, and if any person or corporation refuse or neglects to comply with such quarantine regulations, he shall, upon conviction, pay to the Treasurer of the State a fine of not less than Ten Dollars or more than One Hundred Dollars. [*Act approved March 6, 1907, § 32.*] (*10th Sess. Chap. 110.*)

1506. *Diseased prisoners.*—Whenever any person in any jail shall be attacked with any disease which, in the opinion of the local or county health officer, shall be considered dangerous to the health of the other prisoners, the health officer may, by his order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until his further orders, and if such prisoner shall recover from such disease he shall be returned to such jail. [*Act approved March 6, 1907, § 33.*] (*10th Sess. Chap. 110.*)

1507. *Same.*—If any person removed from any jail by any health officer shall have been committed by order of any court or under any judicial process, the order for his removal, or a copy thereof, attested by the health officer issuing such order, shall be returned to him, with the proceedings endorsed thereon, to the office of the clerk of the district court of the county, and no prisoner removed as aforesaid, shall be considered as thereby having committed an escape. [*Act approved March 6, 1907, § 34.*] (*10th Sess. Chap. 110.*)

1508. *Penalties for putting dead animals into streets, highways, etcetera.*—If any person or persons shall put any dead animal, or part of the carcass of any dead animal into any lake, river, creek, pond, reservoir, road, street, alley, lot, field, or meadow or common, or in any place within one mile of the residence of any person, or persons, except the same and every part thereof be burned, or buried at least two feet under ground, or who being the owner shall knowingly permit the same to remain in any of the aforesaid places to the injury of the health, or to the annoyance of the citizens of this State, or any of them, every person so offending shall be guilty of a misdemeanor, and every twenty-four hours that said person shall permit the same to remain shall be deemed an additional offense under the provisions of this Act. [*Act approved March 6, 1907, § 35.*] (*10th Sess. Chap. 110.*)

1509. *Sewage system must be approved by state board of health.*—Whenever any city, town, corporation, or person shall hereafter contemplate the construction of any sewer system that will empty into any stream or source of water supply in this state, they shall submit a plan of such proposed system to the State Board of Health and said Board shall cause a thorough investigation to be made and if after such an investigation they shall

determine that such sewage will so pollute the waters of any stream or source of water supply as to endanger the health or lives of the citizens of this state, or any of them, they shall submit to the judge of the district court of the district in which such proposed sewage system is located, the evidence on which their findings are based and if said judge upon that evidence, and such other evidence as the judge may receive on a hearing at which all parties in interest may be heard and present evidence if they desire shall find that the action of the State Board of Health is just and unbiased he shall issue an order preventing the construction of such sewage system except under such conditions as the State Board of Health may designate. [*Act approved March 6, 1907, § 36.*] (10th Sess. Chap. 110.)

1510. *Secretary authorized to act for state board in emergency cases.*—In case of imminent danger from infectious or contagious disease, where the health of the people would be endangered from the delay of action necessary to call a meeting of the State Board of Health, the Secretary of the State Board of Health shall have the full power of the State Board of Health to act in such matter until such time as a meeting of the State Board of Health may be duly called. [*Act approved March 6, 1907, § 37.*] (10th Sess. Chap. 110.)

1511. *Penalties.*—Whoever shall knowingly violate any of the provisions of this Act, or any rule or regulation of any county, city or State Board of Health, made in accordance with the provisions of this Act, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor. [*Act approved March 6, 1907, § 38.*] (10th Sess. Chap. 110.)

ARTICLE II.

MILK AND MEAT INSPECTION.

Section 1512. Meat and milk inspector, office created, appointment.

- " 1513. *Deputy state veterinarian. Reports.*
- " 1514. *Salaries of inspectors.*
- " 1515. *Qualifications.*
- " 1516. *Removal of inspectors.*
- " 1517. *Rules and regulations.*
- " 1518. *Powers and duties.*
- " 1519. *Registration of dealers. Fees.*
- " 1520. *Unlawful to sell diseased meats.*
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- " 1522. *Inspection of dairies.*
- " 1523. *Certificate of health for dairy cattle.*
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 “ 1555. *To what products act is applicable.*
 “ 1556. *Adulteration of milk.*
 “ 1557. *What cities may adopt act.*
 “ 1558. *Penalty for violation.*

1512. *Meat and milk inspector office created, appointment.*—The office of Meat and Milk Inspector is hereby created in the State of Montana for the Counties of the first, second and third class and immediately on the passage of this Act, the President and Secretary of the State Board of Health and the State Veterinarian shall appoint a Meat and Milk Inspector for the Counties of the first, second and third class, and when deemed necessary by the President and Secretary of the State Board of Health and the State Veterinarian, or upon the request of one hundred tax payers in the Counties of the fourth, fifth, sixth and seventh classes they shall then appoint a Meat and Milk Inspector for

said Counties of the fourth, fifth, sixth and seventh classes. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 120.)

1513. *Deputy state veterinarian. Reports.*—Such Meat and Milk Inspectors shall be designated Deputy State Veterinarians, and shall make report at the end of each calendar month to the State Veterinarian of all things pertinent to their office, and shall also make an annual report at the end of the fiscal year, addressed to the State Veterinarian. [*Act approved March 8, 1903, § 2.*] (8th Sess. Chap. 120.)

1514. *Salaries of inspectors.*—Said inspectors of the counties of the first class shall receive an annual salary of Two Thousand Dollars (\$2000.00). Inspectors of the second class Counties shall receive One Thousand Five Hundred Dollars (\$1500.00) annually; Inspectors of the third class Counties shall receive One Thousand Two Hundred Dollars (\$1200.00) annually; Inspectors of the fourth class Counties shall receive One Thousand Dollars (\$1000.00) annually; Inspectors of the fifth class Counties shall receive Seven Hundred and Fifty Dollars (\$750.00) annually; and Inspectors of the sixth and seventh class Counties shall receive Six Hundred Dollars (\$600.00) annually, to be paid out of the general State fund monthly. [*Act approved March 7, 1903, § 2.*] (8th Sess. Chap. 120.)

1515. *Qualifications.*—No person shall be appointed to the office of Meat and Milk Inspector unless he is a graduate in good standing of some regular and reputable Veterinary Medical College, or of some regular and reputable Medical College, or of a Medical Department of a University, and must be registered and admitted to practice in the State of Montana, and before such appointment he shall be required to exhibit his diploma as such graduate, and if deemed necessary by the above mentioned Board, he shall pass an examination before said Board upon the specialty of Meat and Milk Inspection. [*Act approved March 7, 1903, § 2.*] (8th Sess. Chap. 120.)

1516. *Removal of inspectors.*—All Inspectors appointed by the above mentioned Board shall be under the direct supervision of the State Veterinarian Surgeon, and for cause may be removed at any time by said Board, consisting of the President and Secretary of the State Board of Health and the State Veterinarian. [*Act approved March 7, 1903, § 3.*] (8th Sess. Chap. 120.)

1517. *Rules and regulations.*—The rules, regulations and methods of inspection adopted by the Bureau of Animal Industry of the United States Government, supplemented by any rules deemed necessary by the aforementioned Board shall be taken as the standard of Meat Inspection, and shall be followed as closely as may be consistent by said Meat and Milk Inspectors appointed by said Board, provided said Inspectors are hereby empowered to enter any premises or any place whatsoever where

animal food products are kept for sale, slaughter houses, markets, stores, or any building or premises of whatsoever character necessary for him to visit in the performance of his duties. [*Act approved March 7, 1903, § 3.*] (8th Sess. Chap. 120.)

1518. *Powers and duties.*—The Meat and Milk Inspector appointed by said Board shall have the right to condemn any meat, carcasses, or parts of carcasses, poultry or fish, or parts thereof, or all cattle, sheep, swine, poultry, fish, or any domestic animal, whatsoever, intended for food for human consumption, which is found, after examination, to be unfit for food, and it shall be said Inspector's duty to destroy all such contaminated meat or poultry or fish by slashing said meat or muscular tissue, or poultry or fish, or carcass, or parts of carcasses of any domestic animal whatsoever, in numerous places, with a knife, and into such incisions said inspector shall then pour or inject with a suitable syringe sufficient kerosene to taint such meat or food product, and make it impossible to be used for human consumption. [*Act approved March 7, 1903, § 5.*] (8th Sess. Chap. 120.)

1519. *Registration of dealers. Fees.*—Any person, persons, or corporation selling or dealing in fresh meats, fish and poultry, in Counties in which a Meat and Milk Inspector is appointed, shall annually, before the first day of June, register in the books of such Inspector, and shall pay an inspection license to such Meat and Milk Inspector in the sum of Fifteen Dollars (\$15.00) per annum, payable quarterly in advance, and each and every wholesale and retail dealer handling, selling or dealing in fresh fish and poultry where fresh meats are not sold or dealt in, shall pay an inspection license to such Meat and Milk Inspector in the sum of Four Dollars (\$4.00) per annum, quarterly in advance, and all moneys so collected by said Inspector shall be by him paid into the State Treasury, quarterly, as received, to be turned into the general fund, and receipted therefor by the Treasurer to such Inspector. [*Act approved March 7, 1903, § 6.*] (8th Sess. Chap. 120.)

1520. *Unlawful to sell diseased meats.*—It shall be unlawful to sell or offer for sale, buy or offer to buy, take or give away, for the purpose of food, any animal suffering from hog cholera, swine plague, charbon or anthrax, rabies, malignant epizootic, catarrh, pyaemia or septicaemia, mange or scab, in advanced stages, actinomycosis, or lump jaw, inflammation of the lungs, the intestines or peritoneum, Texas fever, extensive or generalized tuberculosis, animals in an advanced stage of pregnancy, or which have recently given birth to young, any disease or injury causing an elevation of the temperature or affecting the system of the animal to a degree which would make the flesh unfit for human food; any organ or part of the carcass which is badly bruised or affected by tuberculosis, actinomycosis, cancer, abscess, suppurating sores

or tape worm cyst, poultry or fish or other animal food products in a decaying or putrid condition, or poultry suffering from tuberculosis or other general disease, animals too young and immature to produce wholesome food; animals too emaciated and aenaemic to produce wholesome meat, distemper, glanders and farcy or any other malignant disorder, acute inflammatory lameness and extensive fistula. [Act approved March 7, 1903, § 7.] (8th Sess. Chap. 120.)

1521. *Federal inspection recognized.*—Nothing in this Act, or any paragraph thereof, shall be so construed as to interfere with the offerings for sale of any wholesome meats, bearing the stamp or tag indicating that the same has been inspected by the United States Bureau of animal industry, or of any State or County, or municipal Inspector. *Provided*, however, that if there is any reason to believe that such meat is in a putrid, decaying or unwholesome condition, it shall be said Inspector's duty to inspect such meat whenever complaint is made to him relative thereto, or he personally has reason to believe that such conditions exist, and should he find such meat in a putrid, decaying condition, or preserved by chemical preservatives, or in any condition making it unwholesome for human consumption, it shall then be his duty to destroy such meat, as is herein provided. [Act approved March 7, 1903, § 8.] (8th Sess. Chap. 120.)

1522. *Inspection of dairies.*—It shall be the duty of such Meat and Milk Inspector to inspect each dairy supplying milk to the public in his County for human consumption not less than once in every month during the calendar year, and it shall be the duty of such Inspector to issue to each person or persons, or corporation supplying milk to the citizens of such Counties of the State of Montana, a certificate of health every ninety days, which certificate of health shall include a certificate of the sanitary condition of such dairy. [Act approved March 7, 1903, § 9.] (8th Sess. Chap. 120.)

1523. *Certificate of health for dairy cattle.*—It shall be unlawful for any person or persons, company or corporation, to feed unwholesome food of whatsoever character to his dairy cows. Each dairyman, person, persons, company or corporation, supplying milk to the public, must have for each cow, his certificate of health, including the tuberculum test made by said Inspector, stating that each cow is free from tuberculosis or consumption, or any other infectious disease whatsoever. [Act approved March 7, 1903, § 10.] (8th Sess. Chap. 120.)

1524. *Inspection of milk.*—Whenever in the observation of the Meat and Milk Inspector, proper cleanliness of vehicles, utensils, pails, pans, or other utensils, used in the accumulating, handling, or marketing of said milk is not up to the proper standard, it shall be the Inspector's duty to prohibit the said person or persons,

or corporation from selling said milk, until such time as proper methods of cleanliness and precautions are used in the handling of said milk. [Act approved March 7, 1903, § 11.] (8th Sess. Chap. 120.)

1525. *Dairies must be kept clean.*—All persons or corporations engaged in the dairy business and supplying milk to the citizens of the State of Montana, shall keep their barns or stables free from filth or manure or other substances likely to harbor or favor the growth of disease producing germs therein, or about their stables or barns likely to be carried in, or to contaminate such milk or dairy product. (Act approved March 7, 1903, § 12.] (8th Sess. Chap. 120.)

1526. *Duty to notify inspector of infected milk.*—Any resident of the State of Montana, to whose knowledge or observation comes the fact that any dairyman, person or persons, or corporation, is supplying milk from any diseased cattle, or cattle fed on stable bedding, stable refuse, or any improper food of any character whatsoever, it shall be his duty to at once notify said Inspector of such County, who shall at once visit the premises or place indicated, and if he finds said complaint true, it shall then be said Inspector's duty to at once prohibit the future selling of the product of said dairy, or dealer, or corporation, and to at once file an information against said dairyman, person or persons, corporations or dealer. [Act approved March 7, 1903, § 13.] (8th Sess. Chap. 120.)

1527. *Records of samples inspected.*—Such Inspector shall keep in his book of records kept for the purpose the names and place of business of all persons engaged in the sale of milk and cream within the County, and the Inspector is hereby empowered to enter all places in which milk, cream, or dairy products are stored or offered for sale, and all vehicles used for the conveyance of milk or cream, and may take therefrom samples for analysis. The inspector shall, upon request made at the time such sample is taken, take, seal and deliver to the owner or person from whose possession the milk or cream or dairy products are taken, a portion of each sample, and a receipt therefor shall be given. The Inspector shall analyze such sample, or otherwise satisfactorily test the same, and shall record and preserve such record as evidence of the result thereof, but no evidence of the result of such analysis or test shall be received if the Inspector, on request, refuses or neglects to seal and deliver a portion of the sample, taken as aforesaid, to the owner or person from whose possession it is taken. [Act approved March 7, 1903, § 14.] (8th Sess. Chap. 120.) *

1528. *License of dairymen.*—Any person, persons, or corporation, in Counties in which a Meat and Milk Inspector is appointed, who conveys milk or cream in vehicles of any character whatsoever, for the purpose of selling it in such Counties, shall annually,

before the 1st day of June, be licensed by the Meat and Milk Inspector of said County to sell milk and cream within the limits thereof, and shall pay to such Inspector for each and every vehicle of whatsoever character used in the sale or delivery of such milk or cream or dairy product, the sum of Twelve Dollars (\$12.00) per annum, payable quarterly in advance, which sums shall be paid into the State Treasury by such Inspector, quarterly, as received, to be turned into the general fund, and receipted therefor by said Treasurer to said Inspector.

Sub-Division 1. Licenses shall be issued only in the name of the owner of the vehicles, carriages or other conveyances.

Sub-division 2. Such license shall, for the purposes of this Act, be conclusive evidence of ownership, and shall not be assigned or transferred.

Sub-Division 3. Each license shall contain the number thereof, the name, the residence, the place of business, the number of vehicles used by the person, persons, or corporation, and the name of every driver or other person employed by the owner or owners in carrying, conveying or selling milk or cream. .

Sub-Division 4. Each person, persons, or corporation shall, before engaging in the sale of milk or cream, or dairy products of any character whatsoever, cause his name and number of his license to be placed legibly on each outer side of all carriages or vehicles or conveyance of whatsoever character used by him in the conveyance for sale of milk or cream.

Sub-Division 5. Every person or persons, company or corporation, before selling milk or cream, or offering the same for sale in a store, booth, stand, market place, depot, or any place whatsoever, in a county in which a Meat and Milk Inspector is appointed, shall register in the books of such Inspector his or her name, or the name of the company or corporation, and proposed place of sale.

Sub-Division 6. Nothing in Section 1528 (15), with the exception of Sub-Division five, shall be construed to apply to dairies milking five cows, or less. [*Act approved March 7, 1903, § 15.*] (8th Sess. Chap. 120.)

1529. *Adulterated milk.*—Any person or persons, or servant or agents, or any other person who sells, exchanges, delivers, gives away, or has in his custody or possession, with intent to sell, exchange, or deliver, or give away or expose, or offer for sale or exchange adulterated milk or cream, or milk or cream containing filth or dirt, or milk or cream to which water, boracic acid, salt, salicylic acid, and salicylate of sodium, formaldehyde, formaline, cornstarch, gelatine, isinglass, coloring matter, or any other extraneous substance has been added, or milk produced from cows which have been fed on swill or other improper food, or from sick or diseased cows, or whole milk from which the cream, or a part

thereof, has been removed, and whoever sells, exchanges or delivers, or has in his custody or possession with intent to sell or exchange, deliver or give away, skimmed milk, containing less than nine per cent. of milk solid, exclusive of fat, shall be deemed guilty of a misdemeanor, and shall be punished, as provided in Section 1538 (23) of this Act. [*Act approved March 7, 1903, § 16.*] (8th Sess. Chap. 120.)

1530. *Standard of quality.*—On any prosecution under the provisions of this Act, milk upon which analysis is shown to contain less than twelve per cent of total solids, or less than nine per cent of solids exclusive of fats, or less than three per cent of fat, shall not be considered milk of good standard quality, and cream containing less than fifteen per cent of fat, which shall be the standard of quality for the State of Montana, shall not be considered cream of good standard quality. [*Act approved March 7, 1903, § 17.*] (8th Sess. Chap. 120.)

1531. *Unlawful to sell milk below standard.*—It shall be unlawful for any person or persons, company or corporations, by his or their servant or servants, agent or agents, or as the servants or agents of any other person, persons or corporation, to sell or offer for sale, exchange, or deliver, or give away, or have in his or her custody or possession, with intent to sell, exchange or deliver, milk or cream, which is not of good standard quality, as above prescribed. [*Act approved March 7, 1903, § 18.*] (8th Sess. Chap. 120.)

1532. *Skimmed milk.*—Any person, persons, or corporation, who, by his or their agent or agents, sells, exchanges, gives away, or delivers, or has in his custody, with intent to sell, exchange or deliver milk, from which the cream or part thereof has been removed, not having the words "Skimmed Milk" distinctly marked on a light ground in plain, dark, uncondensed Gothic letters, at least one inch in length, in a conspicuous place upon every receptacle, can or package, from, or in which such milk is contained, or is intended to be sold, exchanged, given away, or delivered, shall be punished, as provided in Section 1538 (23) of this Act.

Sub-Division 1. If such receptacle, can or package is of capacity of not more than two quarts, the said words may be placed upon a detachable label or tag attached thereto, and said letters may be less than one inch in length.

Sub-Division 2. Any milk found in such receptacles, vessels or cans, containing more than one per cent of butter fat, shall not be considered, within the meaning of this Act, "Skimmed Milk." [*Act approved March 7, 1903, § 19.*] (8th Sess. Chap. 120.)

1533. *Counterfeiting seal.*—It shall be unlawful for any person or persons, company or corporation, to cause, to make, or cause to be made, or use or have in his or her, or their possession, an

imitation or counterfeit of a seal used by the Meat and Milk Inspector in the inspection of milk or cream, or to change, or tamper with the samples taken or sealed by the said Inspector. [Act approved March 7, 1903, § 20.] (8th Sess. Chap. 120.)

1534. *Interference with inspector.*—It shall be unlawful for any Meat or Milk Inspector, his servant or agent, to wilfully obstruct or assist in the violation of the provisions of this Act, or whoever hinders, obstructs or interferes with the Meat and Milk Inspector, or his servant or agent, in the performance of his duty, shall be guilty of a misdemeanor. [Act approved March 7, 1903, § 20.] (8th Sess. Chap. 120.)

1535. *Sale of milk from contaminated sources prohibited.*—The Inspector shall prohibit the sale of milk by any person, persons, company, or corporation supplying milk or cream or dairy products from cows that are permitted to drink contaminated or unwholesome water, or any character whatsoever. [Act approved March 7, 1903, § 20.] (8th Sess. Chap. 120.)

1536. *Rules and regulations.*—The President and Secretary of the State Board of Health and the State Veterinarian, are hereby empowered to establish any further rules and regulations necessary for the efficient management and carrying out of said inspection, and the regulations of the Inspectors themselves. [Act approved March 7, 1903, § 21.] (8th Sess. Chap. 120.)

1537. *Appropriations for apparatus.*—There is hereby appropriated the sum of One Thousand Dollars (\$1000.00) for the purpose of buying such chemical and other apparatus as may be absolutely necessary for the purpose of each Inspector in the chemical examination of meat and milk together with buying and supplying such inspectors with the necessary record books, tags, labels, brands or marks, designated by the State Veterinarian, to be paid for on approval of said Board out of the said funds. Said apparatus shall be purchased by the President and Secretary of the State Board of Health and State Veterinarian, and be supplied to each County Meat and Milk Inspector, *provided*, that no money shall be paid out of this fund, except on the approval of said Board, and for the purposes above mentioned. [Act approved March 7, 1903, § 22.] (8th Sess. Chap. 120.)

1538. *Penalties.*—Any person or persons, company or corporation, who violates any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and shall be punishable by a fine of not less than Five Dollars (\$5.00), nor more than Three Hundred Dollars (\$300.00), or imprisonment in the County Jail not less than ten, or more than ninety days, for each separate offense, or by both such fine and imprisonment, and the continuance of such offense for any day shall be deemed a separate offense. [Act approved March 7, 1903, § 23.] (8th Sess. Chap. 120.)

1539. *Oath of office.*—Immediately after the appointment, and before taking office, each Inspector shall file with the Secretary of the State an oath of office, subscribed to by him, and a bond for a sum equal to his annual salary, for the faithful performance of his duty. Said bond shall be furnished with good and sufficient sureties, and be approved by the Secretary of State. [*Act approved March 7, 1903, § 24.*] (8th Sess. Chap. 120.)

1540. *Meat and milk inspector for cities. Appointment.*—The office of Meat and Milk Inspector is hereby created for cities having a population of 5,000 inhabitants or over within the State of Montana, and immediately after the taking effect of this Act such cities shall appoint a Meat and Milk Inspector whose compensation shall be borne by the said cities, and shall be such as will secure the services of some competent and qualified person who shall take an oath of office to faithfully perform the duties of his office and to execute an official bond to the said city in the sum of \$5,000. No person shall be appointed to the office of Meat and Milk Inspector unless he is a graduate in good standing of some regular and reputable veterinary medical college, recognized by the American Veterinary Medical Association and admitted to practice within the State of Montana, and before such appointment he shall be required to exhibit his diploma as such graduate. [*Act approved March 14th, 1901, § 1.*] (7th Sess. 66-67.)

1541. *Designation of place of slaughter. Method of inspection.*—It shall be the duty of the city council of all cities having a population required by this act to designate some place or places in or adjacent to the city where the cattle, sheep or swine or other domestic animals intended for slaughter, sale and consumption for food in said city shall be brought for inspection on the hoof or where the meat of any such animal or animals shall be brought for inspection, which inspection shall be made without any unreasonable delay, and no fee or charge shall be made against or demanded of the owner or person who shall present any such animal or animals or meat intended for food for such inspection, but the same shall be inspected free of any expense whatever to the owner of said food animals intended for meat or on account of the services of such inspector. And it is hereby made the duty of such inspector to keep a correct record in a suitable and substantial book provided by the municipality for that purpose in which he shall record the name, place of residence and post office address of the owner or owners of all such animals intended for food and the carcasses or part of carcasses presented for inspection, together with brands and marks and a full description thereof. The rules, regulations and methods of inspection adopted by the Bureau of Animal Industry, conducted by the United States Government, shall be taken as the standard of meat in-

spection and shall be followed as closely as may be consistent by the Meat and Milk Inspectors appointed by the said cities. [*Act approved March 14th, 1901, § 2.*] (7th Sess. 67.)

1542. *Certificate of inspection.*—All animals intended to be slaughtered for meat for human consumption shall be examined both before and after slaughter. The carcasses of all animals so inspected on hoof shall be properly tagged and marked with the official tag or mark of such municipality before being offered for sale, and such carcass or parts of carcass of any of the animals mentioned in this Act where the animals shall not have been presented for inspection on hoof before being slaughtered shall be inspected before being offered or exposed for sale, and such carcass or carcasses or meat as shall be found upon inspection and examination to be wholesome and fit for food shall be marked as above mentioned by the inspector with a tag similar in form and character to that used by the Bureau of Animal Industry, Department of Agriculture, which tag shall be adopted and designated by the city council of such municipality as the city stamp or certificate for the designation of wholesome and healthy meat. *Provided*, that nothing herein contained shall be so construed as to prevent any person from slaughtering any healthy animal the meat of which is intended for his own use or that of his family, but shall not be offered for sale for public consumption. *Provided further*, however, that nothing in this Act shall be so construed as to permit any person to slaughter and offer for sale any meat or meats intended for domestic consumption before being inspected on the hoof, except where such slaughter may be conducted in a locality inaccessible to said municipal meat and milk inspector. [*Act approved March 14th, 1901, § 3.*] (7th Sess. 67-8.)

1543. *Inspection of meat intended for sale.*—It shall be the duty of the inspector to make inspection of the meats, carcasses and animals mentioned in this Act which may be presented for inspection at the place or places designated by the municipal council and keep the records aforesaid in the manner herein provided, which inspection or inspections shall be made by him as soon as possible and without unreasonable or unnecessary delay and he shall attach to all such meats so inspected and examined and found suitable and wholesome and fit for consumption a tag such as is prescribed above, indicating that fact. [*Act approved March 14th, 1901, § 4.*] (7th Sess. 68.)

1544. *Right to condemn unfit articles.*—The Meat and Milk Inspector appointed by said cities shall have the right to condemn any meat, carcass or carcasses, or parts thereof, of all cattle, sheep, swine or other domestic animal intended for food which they find after examination to be unfit for food, and it shall be said inspector's duty to destroy all such condemned meat by slashing said meat and muscular tissue deeply in numerous places with

a knife, into which he shall then pour sufficient kerosene to taint such meat and make it impossible to be used for human consumption. [*Act approved March 14th, 1901, § 5.*] (7th Sess. 68-9.)

1545. *Sale of diseased articles prohibited.*—It shall be unlawful to sell or offer for sale, buy or offer to buy, take or give away for the purpose of food, any animal suffering from hog cholera, swine plague, charbon or anthrax, rabies, malignant epizootic, catarrh, pyaemia and septocaemia, mange or scab in advanced stages; advanced stages of actinomycosis or lumpy jaw, inflammation of the lungs, the intestines or the peritoneum; Texas fever; extensive or generalized tuberculosis; animals in advanced stage of pregnancy or which having recently given birth to young; any disease or injury causing elevation of temperature or affecting the system of the animal to a degree which would make the flesh unfit for human food; any organ or part of the carcass which is badly bruised or affected by tuberculosis, actinomycosis, cancer, abscess, suppurating sore or tape worm cysts; animals too young and immature to produce wholesome food; animals too emaciated and anaemic to produce wholesome meat; distemper, glanders and farcy or any other malignant disorder; acute inflammatory lameness and extensive fistula. [*Act approved March 14th, 1901, § 6*] (7th Sess. 69.)

1546. *Penalty for selling without inspection.*—Any person or persons, company or corporations which shall sell or offer for sale, buy or offer to buy, take or give away within the limits of said city any carcass or carcasses or portion thereof of any cattle, sheep or swine or other domestic animal which has not been inspected and tagged as herein required, except as herein stated, or shall violate any of the provisions of this Act, shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not less than \$50 nor more than \$500 for each separate offense. [*Act approved March 14th, 1901, § 7.*] (7th Sess. 69.)

1547. *Act not to interfere with federal inspection.*—Nothing in this act nor any paragraph thereof shall be so construed as to interfere with the offering for sale of any meats bearing a stamp or tag indicating that the same has been inspected by the United States Bureau of Animal Industry or of any state, county or municipal meat inspector where regulations equal to those prescribed herein are observed. *Provided however*, that if there is any reason to believe that such meat is in a putrid, decaying or unwholesome condition, it shall be said municipal meat and milk Inspector's duty to inspect such meat whenever complaint is made to him relative thereto, and should he find such meat in a putrid, decaying or unwholesome condition, it shall then be his duty to destroy such meat as is herein provided. [*Act approved March 14th, 1901, § 8.*] (7th Sess. 69-70.)

1548. *Inspection of dairies.*—And it shall be the duty of said Meat and Milk Inspector to inspect each dairy supplying milk to such municipality, not less than once in every month of the calendar year. And it shall be the duty of such Inspector to issue to each person or persons or corporations supplying milk to the citizens of such municipality a certificate of health every ninety days, which certificate of health shall include a certificate of the sanitary conditions of said dairy and must specify each and every cow within said dairy from which milk is supplied to the public. [Act approved March 14th, 1901, § 9.] (7th Sess. 70.)

1549. *Dairymen. Penalties.*—It shall be a misdemeanor for any dairyman, person, persons, or corporation to feed unwholesome food of whatsoever character and for each offense the owner or owners of such dairy shall be fined not less than \$50 nor more than \$500. Each dairyman, person, persons or corporation supplying milk to the public must have for each cow a certificate of health, including the tuberculin test made by said inspector, stating that said cow is free from tuberculosis or consumption or any infectious or other diseases whatsoever. Any dairyman having in his own family or among his employes, or about his premises any one suffering from diphtheria, scarlet fever, typhoid fever or any infectious or contagious disease that may or might contaminate said milk, is prohibited from selling said milk to the public for such period as such disease or diseases exist in his or her family or among his or her employes and said inspector has satisfied himself that such premises have been thoroughly disinfected and has issued a certificate so stating. [Act approved March 14th, 1901, § 10.] (7th Sess. 70.)

1550. *Tests of milk.*—The milk supplied by said dairies or purveyors of milk, shall not contain less than three percentum of butter fats or less than twelve per centum of total of milk solids, and shall come up to a normal and accepted specific gravity test for milk, not less than 1025. [Act approved March 14th, 1901, § 11.] (7th Sess. 70-1.)

1551. *Prohibiting sales from unclean vessels.*—When, in the belief of the said meat and milk inspector proper cleanliness of the buckets, pans, cans, and other utensils used about, accumulating, handling and marketing of said milk is not up to the proper standard, it shall be the inspector's duty to prohibit said dealer, person or persons or corporations, from selling milk until such time as proper methods of cleanliness and precaution are used in its handling. [Act approved March 14th, 1901, § 12.] (7th Sess. 71.)

1552. *Duty of dairymen to keep premises clean.*—All persons or corporation engaging in the dairy business and supplying milk to the citizens of said municipalities shall keep their barns and stables free from filth or dirt or rubbish or manure likely to har-

bor or favor the growth of disease-producing germs within or about their stables likely to be carried within said milk. [*Act approved March 14th, 1901, § 13.*] (7th Sess. 71.)

1553. *Duties of inspector to test milk offered for sale.*—It shall be the duty of said inspector to stop at any time he may deem fit any dairy wagon, cart, or vehicle of any character, person, or persons hauling, carrying or conveying milk that is intended for public consumption, and there and then take cognizance of any irregularity in such milk or the method of handling or distributing said milk. He shall ascertain if it is not up to the regular standing, or the recognized standard to which milk should come, and if he finds said milk deficient in any of its nutritive qualities or to contain any drug or preservative or coloring matter or other extraneous matter, he shall there and then condemn such milk; and such dairyman or milkman, or person or persons or corporation whose product shall be condemned shall be prohibited from selling any milk until they shall have received a written permit from said inspector permitting him so to do. *Provided*, that such inspector shall, if requested by such dairyman, take from the same can of milk from which he shall have taken any quantity of milk for the purpose of testing the same at least one pint of such milk, place the same in a bottle, adding sufficient formaldehyde to such milk to prevent fermentation and seal and mark such milk in such manner as to identify the same and deliver the same to such dairyman who may have said milk analyzed and tested by any chemist competent to test and analyze such milk in order that said dairyman may ascertain the correctness of the inspector's analysis of such milk. *Provided*, that at the time of taking such specimen for said dairyman and for said inspector a third specimen shall be taken by said inspector consisting of not less than one pint of said milk, which shall be taken from the same can from which the other specimens were taken which must be sealed in the presence of said dairyman, person, persons or agent and which said specimen shall be immediately forwarded to the Chemist of the Agricultural Experiment Station at Bozeman for analysis, and said chemist of said Agricultural Experiment Station shall in all cases, when so requested by said dairyman, person or persons or corporation act as umpire in said chemical analysis. [*Act approved March 14th, 1901, § 14.*] (7th Sess. 71-2.)

1554. *Duty to notify inspector of violation of act.*—Any resident of the State of Montana, to whose knowledge or observation comes the fact that any dairyman, person or persons or corporation is supplying milk from any diseased cattle, or cattle fed on stable bedding, stable refuse or other improper food of any character whatsoever, it shall be his duty to at once notify said inspector of such municipality who shall at once visit the premises or place indicated and if he finds the complaint to be true it shall

then be the said inspector's duty to at once prohibit the further selling of the product of such dairy or dealer and at once file an information against said dairyman, person, persons, corporation or dealer in the nearest court. [*Act approved March 14th, 1901, § 15.*] (7th Sess. 72.)

1555. *To what products act is applicable.*—This act shall apply to all the products of the dairy in any municipality to which this Act applies where sold in the state, county or any municipality to which the district covered by said inspector belongs. [*Act approved March 14th, 1901, § 16.*] (7th Sess. 72.)

1556. *Adulteration of milk.*—It shall be a misdemeanor to adulterate milk in any manner whatsoever in a way likely to produce an unwholesome change in said milk, or disease to the consumer, and such milk shall be prohibited from exposure to sale, and any violation of this section shall be a misdemeanor and be punished as is herein mentioned within the meaning of this Act. The use of any product or any unnatural method whatsoever for the preservation or changing of milk excepting pasteurizing or sterilization, shall be a misdemeanor and be punished as is provided for in this Act. [*Act approved March 14th, 1901, § 17.*] (7th Sess. 73.)

1557. *What cities may adopt act.*—Any City in the State of Montana having a population of less than 5,000 inhabitants shall have the option of adopting the sanitary provisions of this Act. *Provided however*, that it shall be unlawful to offer for sale, take or give away any meat from a diseased animal coming under the provisions of this act or any milk from a diseased cow or adulterated or chemically preserved milk or milk containing any extraneous substance within the provisions of this act within the state of Montana. [*Act approved March 14th, 1901, § 18.*] (7th Sess. 73.)

1558. *Penalty for violation.*—Any violation of the provisions of this Act shall be a misdemeanor and shall be punished by a fine of not less than \$50 nor more than \$500 for each separate offense. [*Act approved March 14th, 1901, § 19.*] (7th Sess. 73.)

ARTICLE III.

PROTECTION OF PUBLIC WATER SUPPLY.

Section 1559. State Board of Health to have control of public water supply.

- “ 1560. *Examination of waters.*
- “ 1561. *Publication of orders, rules and regulations.*
- “ 1562. *Employment of agents and servants.*
- “ 1563. *Duties of the Board.*
- “ 1564. *Pollution of water supply.*
- “ 1565. *Protection of water sheds.*
- “ 1566. *Complaints and investigations.*

Section 1567. Agents and servants of boards may enter buildings.

“ 1568. *Appeals to the District Court from orders of the State Board of Health.*

“ 1569. *Jurisdiction of the District Court.*

“ 1570. *Establishment of experimental station.*

“ 1571. *Biennial reports.*

“ 1572. *Penalties for violation of this act.*

1559. *State Board of Health to have control of public water supply.*—That the State Board of Health shall have the general oversight and care of all inland waters and of all streams, lakes and ponds used by any City, Town or Public Institution or by any water or ice company in this State as sources of water supply for domestic use, and of all springs, streams and water courses tributary thereto. It shall be provided with maps, plans and documents suitable for such purposes and shall keep records of all its transactions relative thereto. [*Act approved March 8, 1907, § 1.*] (10th Sess. Chap. 177.)

1560. *Examination of waters.*—That said State Board of Health may cause examination of waters to be made to ascertain their purity and fitness for domestic use or their liability to impair the interests of the public or of persons lawfully using them or to imperil the public health. It may make rules and regulations to prevent pollution and to secure the sanitary protection of all such waters as are used for domestic purposes. [*Act approved March 8, 1907, § 2.*] (10th Sess. Chap. 177.)

1561. *Publication of orders, rules and regulations.*—That the publication of an order, rule or regulation made by the State Board of Health under the provisions of this Act in a newspaper of the City or Town in which such order, rule or regulation is to take effect, or, if no newspaper is published in such City or Town, the posting of a copy of such order, rule or regulation in a public place in such City or Town shall be legal notice to all persons, and an affidavit of such publication or posting by the person causing such notice to be published or posted, filed and recorded, with a copy of the notice, in the office of the clerk of such city or town shall be admitted as evidence of the time at which, and the place and manner in which the notice was given. [*Act approved March 8, 1907, § 3.*] (10th Sess. Chap. 177.)

1562. *Employment of agents and servants.*—That said State Board of Health may appoint, employ and fix the compensation of such agents, clerks, servants, engineers and expert assistants as it considers necessary. Such agents and servants shall cause the provisions of law relative to the pollution of water and of the rules and regulations of said Board to be enforced. [*Act approved March 8, 1907, § 4.*] (10th Sess. Chap. 177.)

1563. *Duties of the Board.*—That said Board shall consult with and advise the authorities of Cities and Towns and persons having, or about to have, systems of water supply, drainage and sewerage as to the most appropriate source of water supply, and the best method of assuring its purity or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other Cities, Towns or persons which may be affected thereby. It shall also consult with and advise all corporations, companies or persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. Cities, towns and all other corporations, companies or persons shall submit to said Board for its advice and approval their proposed system of water supply or of the disposal of drainage or sewage and no City, Town or persons or company shall proceed to build or install or enlarge or extend any system of water supply, drainage or sewage disposal, without first obtaining the approval of the State Board of Health. In this Section, the term, “drainage” means rainfall, surface and subsoil water only and “sewage” means domestic and manufacturing filth and waste. [Act approved March 8, 1907, § 5.] (10th Sess. Chap. 177.)

1564. *Pollution of water supply.*—That no sewage, drainage, refuse or polluting matter, of such kind and amount as either, of itself or in connection with other matter, will corrupt, pollute or impair the quality of the water of any spring, pond, lake or stream used as a source of water or ice supply by a City, Town or public Institution or water or ice company for domestic use, or render it injurious to health; and no human excrement, shall be discharged into any such stream, spring lake or pond or upon their banks or into any feeders of such spring, lake, pond or stream unless such sewage, drainage, refuse or polluting water shall have been purified, so as to render it harmless in such a manner and under such conditions and restrictions as the State Board of Health may direct. [Act approved March 8, 1907, § 6.] (10th Sess. Chap. 177.)

1565. *Protection of water sheds.*—That no municipal or other public or private corporation and no company or person shall hereafter construct, build, establish or operate any railroad, logging road, logging camp, electric plant or manufacturing plant of any kind upon or over any water shed of any public water supply system, unless such corporation, company or person shall protect said water supply from pollution by such sanitary precautions as shall be approved by the State Board of Health, and any such corporation, company or person intending to con-

struct, build or establish or operate any railroad, logging road, logging camp, electric plant or manufacturing plant of any kind upon the water shed of any public water supply system, shall furnish the State Board of Health with detailed plans and specifications of the sanitary precautions to be taken, which must be approved by said Board. [*Act approved March 8, 1907, § 7.*] (10th Sess. Chap. 177.)

1566. *Complaints and investigations.*—That upon complaint to the State Board of Health of the Mayor or Health officer of any City or Town or the managing board or officer of any public institution or the President of an ice company stating that manure, excrement, garbage, sewage or any other matter which pollutes or tends to pollute the waters of any Lake, Pond, Spring, Stream or water course used by such City or Town, Public Institution or Company as a source of water supply, the said Board shall cause a thorough investigation to be made of such alleged nuisance or pollution, and if, in its judgment, the public health so requires, shall by order served upon the party causing or permitting such pollution, prohibit the continuance of such pollution, and shall order him to remove any such cause of pollution. [*Act approved March 8, 1907, § 8.*] (10th Sess. Chap. 177.)

1567. *Agents and servants of boards may enter buildings.*—That the agents and servants of said Board may enter any building, structure or premises for the purpose of ascertaining whether sources of pollution or danger to the water supply there exist, and whether the rules, regulations and orders aforesaid are obeyed. [*Act approved March 8, 1907, § 9.*] (10th Sess. Chap. 177.)

1568. *Appeals to the District Court from orders of the State board of health.*—That whoever is aggrieved by any order of the State Board of Health passed under the provisions of this act may appeal therefrom to the District Court of the County in which such order shall be effective. But such notice as the Court shall order shall also be given to the Mayor of the City or Town or President of the Water Company or any other persons interested in such order. While the appeal is pending the order of the State Board of Health shall be complied with unless otherwise authorized by the State Board of Health. [*Act approved March 8, 1907, § 10.*] (10th Sess. Chap. 177.)

1569. *Jurisdiction of the District Court.*—That the District Court of any county of the State shall have jurisdiction in equity upon the application of the State Board of Health or of any person interested, to enforce its orders or the orders, rules and regulations of said Board of Health, and to restrain the use or occupation of the premises or such portion thereof as said Board may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules

and regulations of said Board have been complied with. [*Act approved March 8, 1907, § 11.*] (*10th Sess. Chap. 177.*)

1570. *Establishment of experimental stations.*—That in order that the State Board of Health may at all times be prepared to give the best advice to cities, towns, public institutions or private corporations relative to the prevention or removal of pollutions of water, said Board is hereby authorized to establish and maintain an experimental station for the purpose of studying the best methods of preventing pollution of water and for the purification of water and for the purification, disinfection and disposal of sewage and domestic and manufacturing waste so as to prevent pollution of water and said Board is authorized to cause sanitary methods and systems in use outside of the State of Montana to be investigated and studied with a view of ascertaining their fitness for conditions in this State. [*Act approved March 8, 1907, § 12.*] (*10th Sess. Chap. 177.*)

1571. *Biennial reports.*—That the State Board of Health shall biennially make a report to the Legislature, through the Governor, of its doings for the preceding period, recommending measures for the prevention of the pollution of such waters and for the removal of polluting substance in order to protect and develop the rights and property of the state and municipalities therein and to protect the public health, and recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of the ponds, lakes, springs and inland waters of the State. It shall also give notice to the Attorney General of any violation of law relative to the pollution of water supplies and inland waters. [*Act approved March 8, 1907, § 13.*] (*10th Sess. Chap. 177.*)

1572. *Penalties for violation of this act.*—That whoever violates any of the provisions of this Act or any rule, regulation or order of the State Board of Health made under the provisions of this act shall be punished for each offense by a fine of not more than one thousand dollars or by imprisonment for not more than one year or by both such fine and imprisonment. [*Act approved March 8, 1907, § 14.*] (*10th Sess. Chap. 177.*)

ARTICLE IV.

REGULATIONS OF THE PRACTICE OF DENTISTRY.

Section 1573. Dentist must obtain certificate.

“ 1574. *Qualifications, appointment and term.*

“ 1575. *Board of dental examiners. Officers.*

“ 1576. *Registration of dentists.*

“ 1577. *Examination of applicants to practice.*

Section 1578. Certificate must be filed.

“ 1579. *Dental register.*

“ 1580. *Temporary certificate.*

“ 1581. *Dentistry defined.*

“ 1582. *Fees for examination. Annual registration fee.*

“ 1583. *Compensation and report.*

“ 1584. *Penalty.*

1573. (§ 620.) *Dentist must obtain certificate.*—It shall be unlawful for any person, who is not at the time of the passage of this act engaged in the practice of dentistry in this state, to commence such practice unless he or she shall have obtained a certificate, as hereinafter provided. [*Act approved March 12, 1895.*]

1574. (§ 621.) *Qualifications, appointment and term.*—A board of dental examiners, to consist of five practising dentists, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this act. The members of said board shall be appointed by the governor from the state at large. The term for which the members of said board shall hold their office shall be five years, except that the members of said board first appointed under this act shall hold their office for the term of one, two, three, four and five years, respectively, and until their successors be duly appointed, the tenures of which terms shall be determined by lot. In case of a vacancy in said board, such vacancy shall be filled by the governor, from the state at large. Not more than two members of the said board shall be appointed from any one county. Each person appointed as a member of the board of dental examiners shall qualify by taking the oath prescribed by the constitution for state officers. [*Act approved March 12, 1895.*]

1575. *Board of dental examiners. Officers.*—Said board shall provide an official seal. Said board shall at its annual meeting choose from its members a President, Vice President, Secretary and Treasurer, and it shall meet at least once in each year, and as much oftener, and at such times and places as it may deem necessary. The Secretary and Treasurer shall give such bonds as the Board may designate. A majority of said Board shall at all times constitute a quorum, and the proceedings thereof shall, at all reasonable times, be open to public inspection. [*Act approved February 25th, 1901, § 1.*] (*7th Sess. 112.*)

1576. (§ 623.) *Registration of dentists.*—Within four months from the time this act takes effect, it shall be the duty of every person who is now engaged in the practice of dentistry in this state, to cause his or her name and residence, or place of business, to be registered with said board of examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a notary public or justice of

the peace in such manner as shall be prescribed by the board of examiners. Every person who shall so register with the said board as practitioner of dentistry shall receive a certificate to that effect, without examination, and may continue to practice as such without incurring any of the liabilities or penalties provided in this act, and shall pay to the board of examiners for such registration and certificate the fee of three dollars. [*Act approved March 12, 1895.*)]

1577. *Examination of applicants to practice.*—Any person or persons who desire to begin the practice of dentistry in the State of Montana after the passage of this Act, shall appear before said Board of Examiners at any of its regular or special meetings for examination. To be eligible for such examination the applicant shall give satisfactory evidence of having practiced dentistry five years, or having been a bona fide student five years, under the immediate supervision of a licensed dentist, or shall present a diploma from some reputable dental college. The examination shall be elementary and practical, but sufficiently thorough to test the ability of the applicant to practice dentistry. It shall include anatomy, physiology, chemistry, dental medicine, metalurgy, histology, pathology, operative, surgical and mechanical dentistry, and also demonstrations in operative and mechanical dentistry. All applicants shall furnish their own gold for demonstration. If the examination shall prove satisfactory to said Board of Dental Examiners, they shall issue a certificate of registration to the person examined. All certificates issued by said Board shall be signed by its president, secretary and a majority of the Board present, and shall have its official seal attached thereto. [*Act approved February 25th, 1901, § 2.*] (*7th Sess. 112.*)

1578. (§ 625.) *Certificate must be filed.*—Every person who shall receive a certificate of registration from said board shall within sixty days after the issuance thereof cause his or her certificate to be filed with the clerk of the county of his or her residence, or with the clerk of any other county or counties in which he or she may desire to engage in the practice of dentistry. The clerk of the county shall charge for registering such certificate the regular fee for such services, and after registering the certificate, shall return it to the person to whom the same was originally issued. Any person who shall fail to register his or her certificate shall be liable for practicing dentistry without license. [*Act approved March 12, 1895.*)]

1579. (§ 626.) *Dental register.*—It shall be the duty of the county clerk to keep a book to be entitled "Dental Register," which book shall contain a complete alphabetical list of all certificates of registration filed in his office, and which books shall be provided with columns, giving the name and residence of the

dentist, together with the date of the certificate, and the date of its filing with the clerk, and the date of revocation. [*Act approved March 12, 1895.*]

1580. *Temporary certificate.*—Any member of the Board of Dental Examiners may, upon examination, grant a temporary certificate to an applicant to practice dentistry until the next meeting of said Board. Immediately upon granting a temporary certificate, such member shall notify the remaining members of the Board, and forward the fees collected therefor to the Treasurer, but such temporary certificate shall not be granted by a member of the Board after the Board has once rejected the applicant. [*Act approved February 25th, 1901, § 3.*] (*7th Sess. 112-113.*)

1581. (§ 628.) *Dentistry defined.*—All persons shall be held to be practicing dentistry within the meaning of this act who shall charge a fee or salary, or other reward, paid either to him or to another person for operations, or parts of operations of any kind, in the treatment of diseases or lesions of human teeth or jaws, or in the correction of the malpositions thereof. But nothing in this act contained shall be taken to apply to physicians who may desire to extract teeth, or to the acts of bona fide students of dentistry, done under the immediate supervision of a preceptor or a licensed dentist in this state. [*Act approved March 12, 1895.*]

1582. *Fees for examination. Annual registration fee.*—In order to provide means for carrying out and maintaining the provisions of this Act, the said Board of Dental Examiners shall charge each person applying to or appearing before them for examination, a fee of twenty-five Dollars. In case an applicant fails to secure a certificate from the Board, he may appear once more before said Board for examination without additional fee. In no case will these fees be returned. Every registered dentist shall in each and every year pay to the Board of Dental Examiners, a fee of one Dollar as his annual dues; such payment to be paid on or before the first day of May of each year. In case of default in such payment by any person, his or her certificate may be revoked by the Board of Dental Examiners upon thirty days notice from the Secretary, to the person holding such certificate, unless within said thirty days said annual dues shall be paid together with such penalties as the Board may impose, and the Board is expressly authorized to impose a penalty of Five Dollars as a consideration for each year for allowing the certificate to remain unrevoked. [*Act approved February 25th, 1901, § 4.*] (*7th Sess. 113.*)

1583. (§ 630.) *Compensation and report.*—Out of the funds coming into the possession of the said board, each of the members of said board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office,

together with all legitimate and necessary expenses incurred in attending the meetings of said board. No part of the compensation or other expenses of the said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon the warrant of the president and the secretary thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act. Said board shall make an annual report of its proceedings to the governor of this state for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the governor on or before the fifteenth day of January of each year. [*Act approved March 12, 1895.*]

1584. (§ 631.) *Penalty.*—Any person who shall violate any of the provisions of this act, or who shall knowingly or falsely claim to have or hold a certificate of registration, license, diploma or degree granted by any society or board of dental examiners, or who shall falsely and with intent to deceive the public, claim or pretend to be the graduate of any incorporated, reputable dental college, or who shall have registered under one name and practice dentistry under another name, with intent to deceive the public, shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined not less than fifty dollars, and not more than two hundred dollars, or be confined in the county jail not less than one month nor more than three months, or may be punished with both such fine and imprisonment. All fines thus received shall be paid into the common school fund of the county in which such conviction takes place. [*Act approved March 12, 1895.*]

ARTICLE V.

REGULATIONS OF THE PRACTICE OF MEDICINE.

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| <i>Section</i> | <i>1585.</i> | <i>Qualifications, appointment and term.</i> |
| " | <i>1586.</i> | <i>Organization of board. Register.</i> |
| " | <i>1587.</i> | <i>Examination of applicants.</i> |
| " | <i>1588.</i> | <i>Examination of applicants for certificates; revocation of certificate. Appeals from decision of board.</i> |
| " | <i>1589.</i> | <i>Certificate must be recorded.</i> |
| " | <i>1590.</i> | <i>Exceptions.</i> |
| " | <i>1591.</i> | <i>Practicing medicine without certificate; penalties.</i> |
| " | <i>1592.</i> | <i>Fees for examination before state board.</i> |
| " | <i>1593.</i> | <i>Compensation. Medical board fund.</i> |

1585. (§ 600.) *Qualifications, appointment and term.*—The governor, with the advice and consent of the senate, shall appoint seven learned, skilled and capable physicians, who shall have been residents of the state of Montana for not less than two years pre-

ceding their appointment, not more than two of whom shall be from the same county, and who have attended three courses of lectures, and are graduates of accredited colleges of medicine, who shall constitute the board of examiners for the purposes of this act. The physicians so appointed shall hold their respective offices for seven years; *Provided*, That the terms in office of those constituting the present board shall not be affected by the provisions of this act; and the terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire; *and Provided*, also that all the vacancies occurring shall be likewise filled by appointment by the governor by the advice and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session. [*Act approved March 13, 1895.*]

1586. (§ 601.) *Organization of board. Register.*—The board of medical examiners must, on the first Tuesday of April of each year, elect from among their number a president, secretary and treasurer, and must have a seal. Four members of said board shall constitute a quorum. The president and secretary have the power to administer oaths in examination of applicants for certificates, and witnesses called before the board in the transaction of business under the provisions of this act. The board of examiners must hold meetings for examinations at the seat of government on the first Tuesdays of April and October of each year, and at such other times and at the same and other places as the board may determine. The board must keep a record of all proceedings thereof and also a register of all applicants for a certificate, with the age of the applicant, time spent in the study of medicine, and the name and location of all the institutions granting to such applicant degrees or certificates of lectures attended in medicine or surgery. The register must also show whether such applicant was rejected, or has received a certificate under this act; such register is *prima facie* evidence of all the matters therein kept. [*Act approved March 13, 1895.*]

State v. Court, 19 Mont. 506; 48 Pac. 1104.

1587. *Examination of applicants.*—Every person hereafter wishing to practice medicine or surgery in any of the departments of this State shall apply to said Board for a certificate so to do. Every person applying shall present his or her diploma to the said Board of Examiners for verification as to its genuineness; if the diploma is found to be genuine, and is issued by a medical school legally organized and in good standing whose teachers are graduates of a legally organized school, which fact said Board of Examiners shall determine, and if the person presenting and claiming said diploma be the person to whom the same was originally granted, at a time and place designated by said Board or at a regular meeting of said Board said applicant

shall submit to an examination in the following branches, to-wit: anatomy, physiology, materia medica, therapeutics, practice of medicine, surgery, obstetrics, diseases of women and children, diseases of the nervous system, diseases of the eye and ear; and present evidence of having attended four courses of lectures of at least six months each, but such evidence of having attended four courses of lectures shall not be required of the applicants graduating prior to July 1, 1898. Said Board shall cause such examination to be both scientific and practical, and of sufficient thoroughness and severity to test the candidate's fitness to practice medicine and surgery; when desired, such examination may be conducted in the presence of the dean of any medical school, or the president of any medical society in this State. After examination, such Board, if the candidate has been found qualified, shall grant a certificate to such candidate to practice medicine and surgery in the State of Montana; which said certificate can be granted only by the consent of not less than four members of said Board, and which said certificate shall be signed by the president and secretary of said Board and attested by the seal thereof; *provided however*, that in all cases where an applicant for a certificate under this section shall produce and exhibit to said Board of Examiners a certificate from a Board of Medical Examiners, duly appointed and existing under the laws of any state of the United States and recognizing certificates or licenses from this state certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate, and that said Board issuing said certificate has subjected the applicant to a thorough examination to ascertain this fact, or certifying to the fact that the person presenting such certificate is duly and well qualified to practice medicine and surgery in the state issuing said certificate; and to the further fact, if such is the case, that said applicant was exempt from examination under the provisions of the law of said state, by reason of his residence in said state in the active practice of medicine and surgery at the time of the passage in said state of said law requiring the examination of applicants to practice medicine and surgery; he or she may, at the discretion of said Board of Examiners upon paying the fee required of applicants for examination under the provisions of Section 1592 (607) of this article, and otherwise complying with all the requirements of this article, receive from said Board of Examiners a certificate to practice medicine and surgery within this state, and upon filing said certificate with the County Clerk of the County in which he resides, as is provided in Section 1589 (604) of this article, he shall be a legally qualified practitioner of medicine and surgery in this state; *provided*, also, that during any period intervening between the sessions of said

Board of Examiners, any person desiring to practice medicine in this state may present his or her diploma to the president or secretary of said Board, who may issue a certificate good until the next regular meeting of said Board; and *provided further*, that all physicians and surgeons who hold certificates granted by the now existing Board of Medical Examiners, or who are now legally entitled to practice medicine and surgery in this state shall be exempt from the provisions of this section. [*Act approved February 23rd, 1903.*] (8th Sess. Chap. 13.)

1588. *Examination of applicants for certificates; revocation of certificates. Appeals from decision of board.*—No person not heretofore licensed to do so shall be permitted to practice medicine in the State of Montana unless he shall have first been subjected to a thorough examination as to his qualifications, learning and professional skill by the State Board of Medical examiners, nor until he has been issued a certificate by such Board after such examination admitting him to practice as a physician and surgeon in the State of Montana. The Board may refuse to grant a certificate for unprofessional, dishonorable or immoral conduct. Before a certificate can be refused for such cause, the Board must serve in writing upon the applicant a copy of any charge or charges against him, and appoint a day for hearing, at which the applicant or any witness in his behalf may appear and give testimony in refutation of such charges. In case the Board, after such hearing refuse a certificate to the applicant, the decision specially stating the ground upon which such refusal was made must be reduced to writing and a copy thereof delivered to the applicant upon demand. Upon a like hearing the Board may refuse a certificate to any one who may publicly profess to cure or treat disease, injury or deformity in such a manner as to deceive the public. The hearing provided for herein must take place within twenty days after the service of the copy of the charges upon the applicant, unless further time is granted to the applicant, and the decision of the Board must not be later than ten days after the day of hearing. If the decision is not rendered within said period of ten days, the applicant is not subject to any penalties for practicing without a certificate during the time that elapses before the decision is made. The Board, with the concurrence of four members thereof, may revoke a certificate for unprofessional, dishonorable or immoral conduct. Before such revocation can take place, a written complaint specifically stating the charges against the person whose certificate is sought to be revoked must be delivered to the Board and a copy thereof be served upon such person twenty days before the time fixed by the Board for the hearing of such charges. The Board must fix the time and place for the hearing, at which the person charged may appear and produce testimony in refutation of such charges.

If after such hearing, the Board revoke the certificate of such person, the ground upon which such revocation is made must be specifically stated by the Board in writing and a copy thereof delivered, on demand, to the person whose certificate is revoked. In all cases of the refusal or revocation of a certificate to practice medicine by said Board, the person aggrieved thereby may appeal from the decision of the Board as hereinafter provided. An appeal may be taken from the action of the State Board of Medical Examiners in refusing to issue a certificate to practice medicine and surgery to any applicant after examination or from the action of said Board in revoking the certificate of any physician or surgeon, to the district court of the county in which such revocation or refusal was made. The appeal is taken by serving notice of appeal upon the Secretary of the Board of Medical Examiners and the Attorney General of the State within thirty days after notice from the Board of Medical Examiners of its decision, and by filing within the same time with the clerk of the proper district court, a verified copy of the decision from which appeal is taken, together with a verified copy of any charge or charges preferred against the applicant and filed with the Board of Medical Examiners. The appellant is required, at the time of filing such appeal, to furnish and file with the clerk of the court a good and sufficient bond to be approved by the clerk of the court, with two good and sufficient sureties, in the sum of three hundred dollars, guaranteeing the payment of all costs of the appeal should the case be decided against the appellant, and the costs shall consist of the sheriffs fees for serving jurors, jurors fees, and the fees of the clerk of the court. Such appeal shall thereafter be tried by the district court before a jury of six physicians—not less than two of whom shall be of the same school of medicine as the appellant—and in case such jury can not be obtained in the county where the case is tried, the judge of such court shall order subpoenas for physicians from any adjoining county or counties, which subpoenas shall be served by the sheriff of such adjoining county upon receipt, after the clerk of the court where the subpoena is issued shall have sent by registered mail, such subpoena to such sheriff. Bias or prejudice or fixed opinion shall constitute a ground of challenge to a juror for cause, and the appellant and the Medical Board shall each have the right to peremptorily challenge not more than two of such jurors. When the jury shall have been selected and sworn to try the cause, they constitute a higher examining board for the purpose of enquiring into whether or not the judgment of the Board of Medical Examiners should be affirmed or overruled upon the issues presented to such Board, and such jury may make such examination of the appellant as they may deem necessary or desirable. It shall take four of the jury to render a verdict, and no

member of the Medical Board is qualified to act as a juror. The Attorney General is hereby made the attorney for said Board. Jurymen subpoenaed under this Act shall be entitled to mileage at the rate of ten cents per mile for each and every mile by them actually travelled in attending upon the court, and of three dollars per day for their services. [*Act approved March 5, 1907.*] (*10th Sess. Chap. 100.*)

1589. (§ 604.) *Certificate must be recorded.*—Every person obtaining a certificate from the board, must, within sixty days from the date thereof, have the same recorded in the office of the county clerk in the county wherein he resides; if he removes from one county to another to practice medicine or surgery, his certificate must immediately be recorded in the county to which he removes. The county clerk must indorse upon the certificate the date of record, and he is entitled to charge and receive his usual fees for such services, the fee to be paid by the applicant. Until the certificate be recorded, as provided by this section, the physician practicing under it is subject to the penalties prescribed in the penal code for practicing without a certificate. [*Act approved March 13, 1895.*]

1590. (§ 605.) *Exceptions.*—This act shall not apply to midwives of skill and experience, commissioned surgeons of the United States army and navy in the discharge of their official duties, nor to physicians and surgeons in actual consultation from other states and territories. [*Act approved March 13, 1895.*]

1591. *Practicing medicine without certificate; penalties.*—Any person practicing medicine or surgery within this State without first having obtained a certificate to practice, as provided by law, and after his certificate to practice has been revoked, or contrary to the provisions of this Act, shall for each violation of the provisions of this Code, or any act relating to the practice of medicine or surgery in this State, be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars nor less than two hundred and fifty dollars, or by imprisonment in the County Jail not exceeding one year, nor less than ninety days, or by both said fine and imprisonment, as the court may determine. Any person shall be regarded as practicing within the meaning of this Act who shall append or affix the letters M. B. or M. D., or the title of Dr. or Doctor, or any other sign or appellation in a medical sense to his or her name, who shall publicly profess to be a physician or a surgeon, who shall publicly profess either on his own behalf, in his own name, in his trade name, or on behalf of any other person, corporation, association, partnership, either as manager, book-keeper, solicitor or other agent, to cure, treat, relieve, or palliate any ailment, disease or infirmity of the mind or body of another by using or prescribing any drug, medicine or surgical treatment, or who

shall recommend, prescribe or direct for the use of any person any drug, medicine, appliance, apparatus, or other agency, whether material or not material, for the cure, relief or palliation of any ailment or disease of the mind or body, or for the cure or relief of any wound, fracture or bodily injury or other deformity after having received, or with the intent of receiving therefor, either directly or indirectly, any bonus, gift, or compensation; *provided, however*, that nothing in this Section shall be construed to restrain or restrict any legally licensed osteopathic practitioner practicing under the laws of this State. Nothing in this Act shall prohibit any legally licensed pharmacist or mercantile dealer from selling any drugs or medicines which are now allowed to be sold under the laws of the State of Montana or the United States. [Act approved March 5, 1907.] (10th Sess. Chap. 101.)

1592. *Fees for examination before state board.*—Candidates for examination shall pay in advance to the Secretary of the Board of Medical Examiners a fee of Twenty-five Dollars, which fee shall defray the entire expense of said candidates for examination before the aforesaid Board of Examiners. Any one failing to pass the required examination shall be entitled to a second examination within six months, without fee. And the moneys so received shall be turned over to the State Treasurer, to be by him deposited in the Medical Board Fund, as hereinafter provided. [Act approved March 6, 1907.] (10th Sess. Chap. 114.)

1593. (§ 608.) *Compensation. Medical board fund.*—Each member of the board is hereby allowed the sum of five dollars per day and mileage while in the active and necessary discharge of his duties. And there is hereby established a fund to be known as the medical board fund. And a sum of fifteen hundred dollars is hereby annually appropriated out of any moneys in the state treasury not otherwise appropriated to meet the expenses incurred in carrying out the provisions of this act. The state treasurer is hereby directed and required to set such sum apart to the credit of such fund, subject to the orders and disbursements as herein provided for. The money in such fund shall only be paid out by warrant on said fund on an order drawn by the secretary of said board, countersigned by the president. The rate of mileage and attendance before said board shall be the same as is now allowed in justice of the peace courts. And the board must report annually on the first Monday in November to the governor, which report must show all the transactions of the board, giving the number of applications received, and from whom received, the number of certificates granted and rejected, and the names of those receiving certificates and those rejected, giving the reasons therefor, the amount of money received, the expenses, the fees

and mileage paid, and by whom received, and the amount of money remaining in said fund. [Act approved March 13, 1895.]

ARTICLE VI.

REGULATIONS OF THE PRACTICE OF OSTEOPATHY.

Section 1594. Board of osteopathic examiners. Appointment and term of office.

“ 1595. *Officers of board. Certificates of qualification.*

“ 1596. *Unlawful to practice without certificate.*

“ 1597. *Temporary certificates.*

“ 1598. *Subjects of examination. Appeal.*

“ 1599. *Certificate does not authorize the practice of surgery.*

“ 1600. *Record of license.*

“ 1601. *Practice of osteopathy without license prohibited.*

“ 1602. *Revocation of certificate.*

“ 1603. *Compensation of board.*

“ 1604. *Graduates may be licensed without examination.*

“ 1605. *Definition of term practicing osteopathy.*

“ 1606. *Osteopathy not practice of medicine.*

1594. *Board of osteopathic examiners. Appointment and term of office.*—The Governor of this State shall appoint a Board as soon as possible after the passage of this Act, to be known as the State Board of Osteopathic Examiners. Said Board shall consist of three qualified, practicing resident Osteopaths, each of whom shall be a graduate of a legally authorized school of Osteopathy; each member of said Board shall serve thereon for a term of four years, and until his successor is appointed, except in cases of the first Board, on which one shall serve for four years, one for three years, and one for two years, as specified in their appointment. In case of vacancy by death or otherwise, there shall be appointed in like manner a person to serve through such unexpired term. [Act approved March 1, 1905, § 1.] (9th Sess. Chap. 51.)

1595. *Officers of board. Certificates of Qualification.*—Said Board of Osteopathic Examiners shall elect a President, a Secretary, and Treasurer on the first Tuesday in March, each year, from among their number, and shall have a common seal, and its President and Secretary shall have power to administer oaths. Said Board shall hold meetings for the examinations at the State Capitol on the first Tuesday in March and September of each year and such other meetings as may be deemed necessary; each session thereof not to exceed three days, and shall issue certificates of qualification to all applicants having a diploma from a legalized, recognized and regularly conducted school of osteopathy

as such, at the time it was issued, or who pass the required examination as provided by Section 1597 (4) of this Act. Said certificates shall be signed by the President and Secretary of said Board, and attested by its seal, and shall be conclusive of the right of the lawful holder thereof to practice osteopathy in this State. Said Board shall keep a record of all proceedings; also a register of all applicants for a license, together with his or her name and age and time spent in the study and practice of osteopathy; and the name and location of the school or institute of osteopathy from which said applicant holds a diploma; and shall keep a register which shall show the names of all applicants licensed; and those who are rejected under this Act. Said books shall be prima facie evidence of all matters recorded therein. [*Act approved March 1, 1905, § 2.*] (9th Sess. Chap. 51.)

1596. *Unlawful to practice without certificate.*—It shall be unlawful for any person to practice osteopathy in this State without a license from said Board; *provided*, that all persons practicing osteopathy within this State prior to the passage of this Act, and holding a diploma from a legally authorized school of osteopathy of good repute as such and wherein the course of study comprises twenty months or four terms of five months each, and shall have been in personal attendance at said school not less than eighty per cent of the required time, may be licensed to practice osteopathy in this State by submitting to said Board of Osteopathic Examiners such a diploma and satisfying such Board that they are the legal holders thereof, or by undergoing an individual examination as hereinafter provided, at a regular meeting of said Board for examination. The fee for such license shall be twenty dollars payable to the Secretary of said Board of Examiners when application is made for certificates; *provided* that in case of failure of an applicant to pass a satisfactory examination, he will be entitled to a second examination without charge at the next succeeding meeting of the Board; *provided*, that all graduates of a reputable school of osteopathy who present themselves for examination, and who have graduated later than April, 1907, shall present satisfactory evidence to the Board of having actually attended such a school for a period of not less than three school years of nine months each. [*Act approved March 1, 1905, § 3.*] (9th Sess. Chap. 51.)

1597. *Temporary certificates.*—The Secretary of the Board of Osteopathic Examiners may upon examination, grant a certificate to an applicant to practice osteopathy until the next meeting of said Board when he shall report the facts, at which time the temporary certificate shall expire, but such temporary certificate shall not be granted by the Secretary of said Board after the Board has once rejected the applicant. [*Act approved March 1, 1905, § 4.*] (9th Sess. Chap. 51.)

1598. *Subjects of examination. Appeal.*—All persons, after March first, 1901, commencing the practice of osteopathy in this State, in any of its branches, shall apply to said Board for a license to do so, and such applicant at the time and place designated by said Board, shall submit to an examination in the following branches, to-wit: anatomy, physiology, chemistry, pathology, gynecology, obstetrics, and theory and practice of osteopathy, and such other branches as are taught in well regulated and recognized schools of osteopathy and deemed advisable by said Board and shall present evidence of having actually attended for at least twenty months, or four terms of five months each a legally authorized and regularly conducted school of osteopathy, recognized by said Board of Osteopathic Examiners, except as otherwise provided in Section 1595 (3) of this Act. All examination papers on subjects peculiar to osteopathy shall be examined and their sufficiency passed upon by members of said Board, whose decision shall be final thereon subject, however, to the right of appeal, which appeal shall be to the District Court of the County in which the examination is held and said District Court shall review such examination without a jury and shall have the right to take testimony thereon and the decision of such District Court shall be also subject to the right of appeal to the Supreme Court by any persons aggrieved thereby, and upon such appeal the Supreme Court shall have the right to consider questions of both law and fact, and said Board shall cause such examination to be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy. After examination the Board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the State of Montana, which license shall be granted by not less than two members of such Board attested by the seal thereof. For the support and maintenance of said Board, the fee for such examination and license shall be twenty dollars, which shall be paid in advance to the Secretary of said Board to defray the expenses thereof. [Act approved March 1, 1905, § 5.] (9th Sess. Chap. 51.)

1599. *Certificate does not authorize the practice of surgery.*—The certificate provided for in Section five of this Act shall not authorize the holder thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery; and any person holding a certificate under this Act, who shall prescribe or use drugs in the practice of osteopathy, or who shall perform major or operative surgery, shall be deemed guilty of a misdemeanor; *provided*, that nothing in this Act shall be so construed as to prohibit any legalized osteopath in this State from practicing major or operative surgery after having passed a satisfactory examination in surgery before the State Board of Medical Examiners of the State of Montana. [Act approved March 1, 1905, § 6.] (9th Sess. Chap. 51.)

1600. *Record of license.*—The person receiving such license shall have it recorded in the office of the County Clerk in the County in which he or she resides, and the record shall be endorsed thereon. In case the person so licensed shall remove to another county to practice, the holder shall record the license in a like manner in the county into which he or she removed, and the County Clerk is entitled to charge and receive the usual fee for making such record. [Act approved March 1, 1905, § 7.] (9th Sess. Chap. 51.)

1601. *Practice of osteopathy without license prohibited.*—Any person practicing osteopathy in this state without first obtaining a license herein provided for, or contrary to the provisions of this act, or who, for the purpose of obtaining such license shall falsely represent himself or herself to be the holder of a diploma as herein provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, nor less than two hundred and fifty dollars, or by imprisonment in the county jail not exceeding one year, nor less than ninety days, or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this act. [Act approved March 6, 1907, § 1.] (10th Sess. Chap. 112.)

1602. *Revocation of certificate.*—Any such certificate may be revoked by said Board, upon satisfactory proof of fraud, or misrepresentation in procuring the same, or for any violation of the provisions of this Act, or any gross immorality by the holder of such certificate. [Act approved March 1, 1905, § 9.] (9th Sess. Chap. 51.)

1603. *Compensation of Board.*—Out of the funds coming into the possession of said Board each of the members of said Board may receive as compensation the sum of five dollars for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said Board. No part of the compensation or other expenses of said Board shall be paid out of the State Treasury. The fees coming into the Treasury of said Board shall be paid out upon a warrant of the President and Secretary thereof in payment of the compensation and expenses of said Board in carrying out the provisions of this Act. Said Board shall make an annual report of its proceedings to the Governor of the State for the year ending on the thirty-first day of December preceding the making of said report. Said report shall be filed with the Governor on or before the fifteenth day of January of each year. [Act approved March 1, 1905, § 10.] (9th Sess. Chap. 51.)

1604. *Graduates may be licensed without examination.*—Every graduate of a reputable school of osteopathy who has been

strictly examined and thereafter licensed to practice osteopathy in another state, may be licensed to practice osteopathy in this State upon the production, to the Board, of his or her diploma, and the license obtained in such other state and satisfactory evidence of good moral character, and the payment of all legal fees required of other applicants; but the Board may examine the applicant as to his or her qualification. [*Act approved March 1, 1905, § 11.*] (9th Sess. Chap. 51.)

1605. *Definition of term practicing osteopathy.*—Every person shall be deemed practicing osteopathy within the meaning of this act who shall,

(a) Attend to, or use in connection with his or her name the words "Doctor of Osteopathy, or Diplomat of Osteopathy, or Osteopath, or Osteopathist, or Osteopathic Practitioner, or Osteopathic Physician," or words of like import, or any abbreviation thereof, or the letters "D. O.," or who shall,

(b) Profess publicly to, or who shall, either on his own behalf, in his own name, or in his trade name, or in behalf of any other person, corporation, association, partnership, either as manager, book-keeper, practitioner, or agent, treat, cure, alleviate or relieve any ailment or disease of either mind or body, or cure or relieve any fracture or misplacement or abnormal condition, or bodily injury or deformity, by any treatment, or manipulation or method of manipulating a human body or any of its limbs, muscles or parts, by the use of the hands, or mechanical appliances, in an effort or attempt to relieve any pressure, obstruction, misplacement or defect, in any bone, muscle, ligament, nerve, vessel, organ or part of the body, after having received, or with the intent or expectation of receiving therefor either directly or indirectly any bonus, gift or compensation whatsoever. *Provided, however,* that nothing in this Section shall be construed to restrain or restrict any legally licensed physician or surgeon in the practice of his profession. [*Act approved March 6, 1907, § 2.*] (10th Sess. Chap. 112.)

1606. *Osteopathy not practice of medicine.*—The system, method, or science of treating diseases of the human body, commonly known as osteopathy, is hereby declared not to be the practice of medicine or surgery within the meaning of Sections 1585 (600), 1586 (601), 1587, 1588, 1589 (604), 1590 (605), 1591, 1592 and 1593 (608) of Article V., Chapter I, Title VII, Part III, of the Political Code of the State of Montana, and not subject to the provisions of said Sections, and Section 8544 (706), Title 10, of the Penal Code of the State of Montana, and not subject to the provisions of said Sections. [*Act approved March 1, 1905.*] (9th Sess. Chap. 51.)

ARTICLE VII.

REGULATIONS OF THE PRACTICE OF OPTOMETRY.

- Section 1607. Practice of optometry defined.*
- “ 1608. *Unlawful to practice optometry without certificate.*
- “ 1609. *Creation of state board of examiners in optometry.*
- “ 1610. *Organization and meeting of board.*
- “ 1611. *Examination of applicants to practice.*
- “ 1612. *Certificates to issue to persons now engaged in practice.*
- “ 1613. *Exemption.*
- “ 1614. *Registration of certificate in county.*
- “ 1615. *Failure to apply for certificate; forfeiture of right.*
- “ 1616. *Certificate to be displayed in office.*
- “ 1617. *Compensation of members of board of examiners.*
- “ 1618. *Revocation of certificates to practice.*
- “ 1619. *Penalties for violation of act.*
- “ 1620. *Jurisdiction of justices of the peace.*
- “ 1621. *Act not to apply to physicians and surgeons.*

1607. *Practice of optometry defined.*—The practice of Optometry is defined as follows: namely: The employment of subjective and objective mechanical means, without the use of drugs, to determine the accommodative and refractive states of the eye, and the scope of the functions in general. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 138.)

1608. *Unlawful to practice optometry without certificate.*—From and after the first day of April, 1907, it shall be unlawful for any person to practice Optometry in the State of Montana, unless he shall first have obtained a certificate of registration and filed the same, or a certified copy thereof, with the clerk of the District Court of the County of his residence, all as hereinafter provided. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 138.)

1609. *Creation of state board of examiners in optometry.*—There is hereby created a Board, whose duty it shall be to carry out the purposes and enforce the provisions of this Act, and shall be styled the “Montana State Board of Examiners in Optometry.” Said Board shall be appointed by the Governor as soon as practicable after the passage of this Act, and shall consist of five resident opticians engaged in the actual practice of Optometry. Each member of said Board shall hold office for a term of three years, and until his successor is appointed. Appointments to fill vacancies caused by death, resignation or removal shall be made,

for the residue of such term, by the Governor. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other State officers, which shall be administered by the Secretary of State, and filed in his office; and said board shall have a common seal. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 138.*)

1610. *Organization and meeting of board.*—Said board shall choose at its first regular meeting, and annually thereafter, one of its members, president, and one, secretary, thereof, who, severally, shall have the power, during their term of office, to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year, at the State Capitol, and, in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 138.*)

1611. *Examination of applicants to practice.*—Every person, before beginning to practice Optometry in this State, after the passage of this Act, shall pass an examination before said Board of Examiners. Such examination shall be confined to such knowledge as is essential to the practice of Optometry. Any person having signified to said board his desire to be examined by them, shall appear before them at such time and place as they designate, and, before beginning such examination, shall pay to the secretary of said board, for the use of said board, the sum of ten (\$10.00) dollars, and, if he shall successfully pass such examination, shall pay to said secretary for the use of said board, a further sum of five (\$5.00) dollars on the issuance to him of a certificate. All persons successfully passing such examination shall be registered in the Board Register, which shall be kept by said Secretary, as licensed to practice Optometry, and shall also receive a certificate of such registration, to be signed by the president and secretary of said board, which shall be filed as hereinbefore provided. [*Act approved March 7, 1907, § 5.*] (*10th Sess. Chap. 138.*)

1612. *Certificate to issue to persons now engaged in practice.*—Every person, who is engaged in the practice of Optometry in the State of Montana at the time of the passage of this Act, shall, within three months thereafter, file an affidavit in proof thereof with said Board, who shall make and keep record of such persons, and shall, in the consideration of the sum of five (\$5.00) dollars, issue to him a certificate of registration. [*Act approved March 7, 1907, § 6.*] (*10th Sess. Chap. 138.*)

1613. *Exemption.*—All persons entitled to a certificate of registration under the full provisions of Section 1612 (6) shall be

exempt from the provisions of Section 1611 (5) of this Act. [Act approved March 7, 1907, § 7.] (10th Sess. Chap. 138.)

1614. *Registration of certificate in county.*—Recipients of said certificate of registration shall present the same for record to the clerk of the district court of the county in which they reside, and shall pay a fee of fifty cents to the clerk for recording the same. Said clerk shall record said certificate in a book to be provided by him for that purpose. Any person so licensed, removing his residence from one county to another in this state, shall, before engaging in the practice of Optometry in such other county, obtain from the clerk of the district court of the county in which said certificate of registration is recorded a certified copy of such record, or else obtain a new certificate of registration from the Board of Examiners, and shall, before commencing practice in such county, file the same for record with the clerk of the court of the county to which he removes, and pay the clerk thereof, for recording the same, a fee of fifty cents. Any failure, neglect or refusal on the part of any person holding such certificate or copy of record to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. Such board shall be entitled to a fee of one dollar for the re-issue of any certificate, and the clerk of the district court of any county shall be entitled to a fee of one dollar for making and certifying the copy of the record of any such certificate. [Act approved March 7, 1907, § 8.] (10th Sess. Chap. 138.)

1615. *Failure to apply for certificate; forfeiture of right.*—Any person entitled to a certificate, as provided for in Section 1612 (6) of this Act, who shall not, within six months after the passage thereof, make written application to the Board of Examiners for a certificate of registration, accompanied by a written statement, signed by him, and duly verified before an officer authorized to administer oaths within this State, fully setting forth the grounds upon which he claims such certificate, shall be deemed to have waived his right to a certificate under the provisions of said section. Any failure, neglect or refusal on the part of any person holding such certificate to file the same for record, as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. [Act approved March 7, 1907, § 9.] (10th Sess. Chap. 138.)

1616. *Certificate to be displayed in office.*—Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office, wherein the practice of Optometry is conducted. [Act approved March 7, 1907, § 10.] (10th Sess. Chap. 138.)

1617. *Compensation of members of board of examiners.*—Out of the funds coming into the possession of said board, each member

thereof, may receive, as compensation, the sum of five (\$5.00) dollars for each day actually engaged in the duties of his office, and mileage at three cents per mile for all distances necessarily traveled in going to and coming from the meetings of said board. Said expenses shall be paid from the fees and assessments received by the board under the provisions of this Act, and no part of the salary or other expenses of the board shall ever be paid out of the State treasury. All moneys received in excess of said per diem allowance and mileage, as above provided for, shall be held by the secretary, as a special fund for meeting expenses of said board, and carrying out the provisions of this Act, and he shall give such bonds as the board shall, from time to time, direct, and the said board shall make an annual report of its proceedings to the Governor on the first Monday in January of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this Act. [*Act approved March 7, 1907, § 11.*] (*10th Sess. Chap. 138.*)

1618. *Revocation of certificate to practice.*—Said board shall have the power to revoke any certificate of registration, granted by it under this Act, for conviction of crime, habitual drunkenness for six months immediately before a charge to be made, gross incompetence, or contagious or infectious disease, or who publicly profess to cure disease; *Provided*, that before any certificate shall be revoked, the holder thereof shall have notice in writing of the charge or charges against him, and, at a day specified in said notice, at least five days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf, and to confront the witnesses against him. Any person, whose certificate has been revoked, may, after the expiration of ninety days, apply to have the same re-granted, and the same shall be re-granted him upon a satisfactory showing that the disqualification has ceased. [*Act approved March 7, 1907, § 12.*] (*10th Sess. Chap. 138.*)

1619. *Penalties for violation of act.*—Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, upon conviction, may be fined not less than twenty (\$20.00) dollars nor more than one hundred (\$100.00) dollars, or be confined not less than one month, nor more than three months in the county jail. And all fines, thus received, shall be paid into the common school fund of the county in which such conviction takes place. [*Act approved March 7, 1907, § 13.*] (*10th Sess. Chap. 138.*)

1620. *Jurisdiction of justices of the peace.*—Justices of the Peace and the respective municipal courts shall have jurisdiction of violations of this Act. It shall be the duty of the respective county attorneys to prosecute all violations of this Act. [*Act approved March 7, 1907, § 14.*] (*10th Sess. Chap. 138.*)

1621. *Act not to apply to physicians and surgeons.*—Nothing in this Act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the State of Montana, nor to persons who sell spectacles or eye glasses without attempting to traffic upon assumed skill in adopting them to the eye. [Act approved March 7, 1907, § 15.] (10th Sess. Chap. 138.)

ARTICLE VIII.

REGULATIONS OF THE BUSINESS OF PHARMACY.

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| Section | 1622. | <i>Pharmacists must register.</i> |
| " | 1623. | <i>Examination. "Registered pharmacists."</i> |
| " | 1624. | <i>Examination. "Assistant pharmacist."</i> |
| " | 1625. | <i>Qualification, appointment and term.</i> |
| " | 1626. | <i>Organization. Meetings. Certificate.</i> |
| " | 1627. | <i>Salaries.</i> |
| " | 1628. | <i>Second examination allowed.</i> |
| " | 1629. | <i>Renewal fee.</i> |
| " | 1630. | <i>Certificate.</i> |
| " | 1631. | <i>Penalty.</i> |
| " | 1632. | <i>Same.</i> |
| " | 1633. | <i>Same.</i> |
| " | 1634. | <i>Adulterated drugs.</i> |
| " | 1635. | <i>Duty of board.</i> |
| " | 1636. | <i>Sale of poisons regulated.</i> |
| " | 1637. | <i>License of itinerant vendor.</i> |
| " | 1638. | <i>Repealing clause.</i> |

1622. (§ 640.) *Pharmacists must register.*—That it shall hereafter be unlawful for any person other than a registered pharmacist, as hereinafter defined, to retail, compound or dispense drugs, medicines or pharmacal preparations, in the state of Montana, or to institute, conduct or manage a pharmacy, store or shop for the retailing, compounding or dispensing drugs, medicines or pharmacal preparations, in the state of Montana, unless such person shall be a registered pharmacist, as this act provides, or shall place in charge of said pharmacy store or shop a registered pharmacist, except as hereinafter provided. [Act approved March 9, 1895.]

1623. (§ 641.) *Examination. "Registered pharmacists."*—Registered pharmacists shall comprise all persons who shall within three months after the passage of this act forward to the state board of pharmacy satisfactory proof, supported by their affidavit, that they are practical pharmacists, or are engaged in the business of retail pharmacist in the state of Montana on their own account, at the time of the passage of this act, and who shall then, upon the payment of a fee of five dollars, be granted a certificate of registration; *Provided*, That in case of failure or neglect to

register as herein specified, that such person shall, in order to obtain a registration, pass a satisfactory examination as to his competency before the state board of pharmacy; and all persons over twenty-one years of age, having four years' practical experience in compounding and dispensing of physicians' prescriptions, who shall pass a satisfactory examination before the state board of pharmacy; *Provided, however* that such persons over twenty-one years of age, having had four years' practical experience in compounding and dispensing of physicians' prescriptions, who may be or ever have been engaged in said business, either as proprietor or employe, and residents of Montana at the date of the passage of this act, may become registered pharmacists upon furnishing satisfactory proof of such fact to the board and the payment of a fee of five dollars; graduates in pharmacy who have obtained diplomas from such colleges and schools of pharmacy as shall be approved by the board of pharmacy, and who have had two years' experience in the dispensing of physicians' prescriptions, shall, on payment of a fee of five dollars, be made a registered pharmacist. [*Act approved March 9, 1895.*]

1624. (§ 642.) *Examination. "Assistant pharmacists."*—Assistant pharmacist, in the meaning of this act, shall comprise all persons over eighteen years of age, having one year's practical experience in the compounding and dispensing of physicians' prescriptions, who shall pass such examination as the state board of pharmacy shall require, and pay a fee of one dollar; *Provided, however*, that all persons over eighteen years of age who have had three years' practical experience in compounding and dispensing of physicians' prescriptions within the state of Montana, prior to the passage of this act may become assistant pharmacists upon furnishing satisfactory proof of such fact to the board and the payment of a fee of three dollars. Assistant pharmacists shall not be permitted to conduct or manage on their own account any pharmacy, nor assume the management of such business for others. [*Act approved March 9, 1895.*]

1625. (§ 643.) *Qualification, appointment and term.*—Immediately upon the passage of this act, the Montana Pharmacal Association may submit to the governor of the state of Montana the names of ten registered pharmacists having at least ten years' practical experience as dispensing pharmacists; *Provided, however*, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists, of less than ten years' practical experience, who are graduates in pharmacy, and from this number the governor shall appoint three; at least one of whom shall be a graduate in pharmacy and the said three registered pharmacists shall constitute the state board of pharmacy of the State of Montana, to have and hold office for the term of one, two, and three years respectively, as

designated in their appointments, or until their successors shall have been duly appointed and qualified. Annually thereafter the Montana Pharmacal association may elect five registered pharmacists, having ten years' practical experience as dispensing pharmacists; *Provided, however*, that nothing herein contained shall be so construed as to apply to or exclude registered pharmacists of less than ten years' practical experience who are graduates in pharmacy. And the governor shall appoint one registered pharmacist from this number to fill the vacancy annually occurring on the board. The term of office shall be three years, or until a successor is appointed and qualified. In case of resignation or removal from the state of any member of the said board, or a vacancy occurring from any cause, the governor shall immediately appoint from the remaining selections of the Montana State Pharmacal Association a registered pharmacist to serve as a member of the board for the remainder of the unexpired term; *Provided, however*, that said board shall always contain at least one graduate in pharmacy. [*Act approved March 9, 1895.*]

1626. (§ 644.) *Organization. Meetings. Certificate.*—The said board shall within thirty days after its appointment, meet in the city of Helena, and organize by the selection of a president, secretary and treasurer, who shall serve for the term of one year, and who shall perform the duties prescribed by the board. Meetings for the examination of applicants for registration, granting of certificates, and the transaction of such other necessary business, shall be held not to exceed twice in any one year, and at such times and places, as may be fixed by the board; *Provided*, That thirty days' notice of the time and place of each meeting at which there is an examination of candidates, for registration, shall be given. It shall be the duty of the board to receive all applications for examination and registration, submitted in proper form, to grant certificates, to such persons as may be entitled to the same under this act; to cause the prosecution of all persons violating any of the provisions of this act; to report annually to the governor, and to the state pharmacal association upon the condition of pharmacy in the state of Montana, which report shall furnish also a record of the proceedings of the board, as well as the names of all persons registered under this act; to keep a book for registration, in which shall be entered the names and places of business of all persons registered under this act; on what grounds and under what particular section of this act, each was registered and any other facts pertaining to the granting of certificates. The said board shall have power to make by-laws for the full and proper execution of its duties under this act; to prescribe the forms and methods of application, examination and registration; to demand and receive from applicants the fees herein provided, which shall be held by the board and applied to the payment of

salaries and other necessary expenses, incident to the full discharge of its duties. [*Act approved March 9, 1895.*]

1627. (§ 645.) *Salaries.*—The salaries of said board shall be five dollars to each member for each day of actual service and all legitimate expenses incurred in the discharge of official duties. The secretary of said board shall receive an additional salary to be fixed by the board, and not to exceed one hundred and fifty dollars per annum; he shall pay to the treasurer at each regular meeting, or whenever the board may direct, such funds of the board as may be in his possession, and take the treasurer's receipt therefor; *Provided*, That no part of the salaries or expenses of the board shall be paid out of the state treasury. In its annual report to the governor and the Montana Pharmacal association, the board shall render an account of all moneys received and disbursed, pursuant to this act; and the secretary and treasurer shall give such bonds as such board shall from time to time direct. [*Act approved March 9, 1895.*]

1628. (§ 646.) *Second examination allowed.*—Every person seeking registration under this act, whose registration is not otherwise provided for, shall make application, in form and manner prescribed by the board and deposit with the secretary of the board a fee of five dollars; then, on presenting himself at the time and place directed by the board, and sustaining a satisfactory examination, he shall be granted an appropriate certificate setting forth his particular qualifications; *Provided*, That in case of failure of an applicant to pass a satisfactory examination he will be entitled to a second examination without charge, at the next succeeding meeting of the board. [*Act approved March 9, 1895.*]

1629. (§ 647.) *Renewal fee.*—Every registered pharmacist, and every assistant pharmacist, in the meaning of this act, who desires to continue in the pursuit of pharmacy, in this state, shall annually, after the expiration of the first year of registration, and on or before the second day of July of each year, and after having been notified by the secretary of the state board of pharmacy, pay to the secretary of the board of pharmacy, a renewal fee, to be fixed by the board, which shall not exceed two dollars, in return for which a renewal of registration shall be issued. If any person shall fail or neglect to procure his annual registration as herein specified, notice of such failure having been mailed to his post-office address, by the secretary of the state board of pharmacy, as obtained from the books of the secretary, he shall, after the expiration of thirty days following the issue of said notice, be deprived of all privileges conferred by this act; and after six months he shall be deprived of his registration, and it shall be necessary for such person to make application and pass examination as provided in § 1628 (646) of this act. [*Act approved March 9, 1895.*]

1630. (§ 648.) *Certificate*.—Every person registered under this act shall receive from the state board an appropriate certificate, not exceeding in size three hundred and twenty square inches, which shall be conspicuously displayed at all times in his place of business. If the holder be entitled to manage or conduct a pharmacy in this state for himself or another, the fact shall be set forth in the certificate. [*Act approved March 9, 1895.*]

1631. (§ 649.) *Penalty*.—Any person who is not a registered pharmacist in the meaning of this act, who shall keep a pharmacy, store or shop for the compounding and dispensing of physicians' prescriptions, or for the sale of drugs, medicines, or chemicals, and who shall not have in his employ in said pharmacy, store or shop, a registered pharmacist, in the meaning of this act, shall for each and every such offense, be liable to a fine of two hundred and fifty dollars. [*Act approved March 9, 1895.*]

1632. (§ 650.) *Same*.—Any person who shall unlawfully and without authority under this act, take, use or exhibit the title of registered pharmacist or assistant pharmacist in the state of Montana shall be liable to a fine of one hundred dollars for each and every such offense; a like penalty shall attach to any assistant pharmacist who shall, without authority, take, use or exhibit the title of a registered pharmacist in the state of Montana. [*Act approved March 9, 1895.*]

1633. (§ 651.) *Same*.—Any proprietor of a pharmacy, or other person, who shall permit the compounding and dispensing of physicians' prescriptions or the vending of drugs, medicines or pharmacal preparations, in his store or place of business, except by a registered pharmacist, in the meaning of this act, or under the immediate supervision of a registered pharmacist or who, while continuing in the pursuit of pharmacy in the state of Montana, shall fail or neglect to procure his annual registration, or any person who shall willfully make any false representations to procure for himself, or for another, registration under this act, or who shall violate any other provision of this act, shall, for each and every offense, be liable to a fine of one hundred dollars; *Provided*, That nothing in this act shall interfere with the business of those merchants who keep on sale such poisons, acids and chemicals as are regularly used in agriculture, mining and the arts, when kept and sold for such purposes only, in sealed and plainly labeled packages; *Provided*, also, that nothing in this act shall in any manner interfere with the business of any physician in regular practice, nor prevent him from supplying to his patients such articles as may seem proper, nor with exclusive wholesale business of any dealers, except as hereinafter provided; *Provided*, also, that nothing in this act shall in any manner interfere with the business of merchants in towns having less than five hundred

inhabitants, in which there is no licensed pharmacy, to sell or vend such medicines, compounds and chemicals as are required by the general public. [*Act approved March 9, 1895.*]

1634. (§ 652.) *Adulterated drugs.*—The proprietors of all pharmacies will be held responsible for the quality of all drugs and medicines and chemicals sold or dispensed at their respective places of business except patent and proprietary preparations, and articles sold in the original packages of the manufacturer. Any person who shall willfully adulterate or alter, or cause or permit to be adulterated or altered, any drug, medicine, or pharmaceutical preparation, or shall sell or offer for sale any such adulterated or altered article, and any person who shall substitute, or cause to be substituted, one material for another, with the intention to defraud or deceive the purchaser, shall be guilty of a misdemeanor and liable to a prosecution therefor. All penalties collected for such violations shall be paid into the county treasurer of the county wherein such conviction may be had, for the benefit of the school fund of such county. [*Act approved March 9, 1895.*]

1635. (§ 653.) *Duty of board.*—Annually on the first day of July of each year, the state board of pharmacy shall pay into the treasury of the state all moneys then held by said board, over and above the sum of three hundred dollars, and which have been received by said board as registration fees for the expiring year. [*Act approved March 9, 1895.*]

1636. *Sale of poisons regulated.*—It shall be unlawful for any person from and after the passage of this Act to retail any of the following named poisons, to-wit: Arsenic, and its preparations, corrosive sublimate, white and red precipitate, biniodide of mercury, cyanide of potassium, hydro-cyanic acid, strychnine, and all poisonous vegetable alkaloids and their salts, the essential oil of almonds; opium and its preparations, except paregoric and other preparations of opium containing less than two grains to the ounce; aconite, belladonna, colchicum, conium, nux-vomica, digitalis, and their pharmaceutical preparations; croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid, oxalic acid; wood alcohol; without labeling the box, bottle, vessel, paper or package in which said poison is contained, with the name of the article, and the word "poison," and the name and place of business of the seller. Also each label of such poison shall contain a concise statement of the principal antidotes for the poison so labeled. The label hereby required to be placed upon wood alcohol shall contain the following: "Warning." "The fumes of wood alcohol burned in a close room, if inhaled are injurious to eyesight, often producing total blindness." Nor shall it be lawful for any person to deliver or sell any poisons enumerated above, unless upon due inquiry it be found that the purchaser is aware of its poisonous character, and represents that it be used for a legitimate purpose. The provisions of this Section shall not

apply to the dispensing of poisons in not unusual quantities or dose upon the prescription of practitioners of medicine. Any person or persons violating the provisions of this Section shall be deemed guilty of a misdemeanor; *Provided*, however that this section shall not apply to manufacturers, making and selling at wholesale any of the above poisons, and provided that each bottle, box, vessel, paper, or package in which said poison is contained shall be labelled with the name of the article, the word "poison," and the name and place of business of the seller. [*Act approved March 7, 1907.*] (10th Sess. Chap. 156.)

1637. (§ 655.) *License of itinerant vender*.—Any itinerant vender of any drug, poison, ointment or appliance of any kind intended for treatment of any disease or injury, who shall, by writing or printing, or any other method, publicly profess to cure or treat disease or injury, or deformity, by any drug, nostrum, or manipulation or other expedient, shall pay a license of fifty dollars per annum in each county in which he may offer to do business, or according to the usual laws in force for that purpose. [*Act approved March 9, 1895.*]

1638. *Repealing clause*.—Section 8488 (680) of the Penal Code of the state of Montana, together with all laws and parts of laws contrary to or in conflict with this act, are hereby repealed. [*Act approved March 9, 1895.*]

ARTICLE IX.

INSPECTION OF BOILERS.

<i>Section</i>	<i>1639.</i>	<i>Appointment. Salary.</i>
"	<i>1640.</i>	<i>Qualifications.</i>
"	<i>1641.</i>	<i>Assistants to boiler inspector.</i>
"	<i>1642.</i>	<i>Office. Rules and regulations.</i>
"	<i>1643.</i>	<i>Inspection of boilers.</i>
"	<i>1644.</i>	<i>Same.</i>
"	<i>1645.</i>	<i>Same. Assistant may act.</i>
"	<i>1646.</i>	<i>Examination may be made at any time.</i>
"	<i>1647.</i>	<i>Duty to permit inspection.</i>
"	<i>1648.</i>	<i>Classification of licenses.</i>
"	<i>1649.</i>	<i>Classification of engineers.</i>
"	<i>1650.</i>	<i>License revoked. Publication of notice of time of application.</i>
"	<i>1651.</i>	<i>Certificate of inspection.</i>
"	<i>1652.</i>	<i>Fees of inspectors.</i>
"	<i>1653.</i>	<i>Re-examination for license.</i>
"	<i>1654.</i>	<i>A board to re-examine applicants.</i>
"	<i>1655.</i>	<i>Locomotives and low pressure boilers exempted.</i>

Section 1656. Certificates must be renewed yearly. Annual report.

“ 1657. *Liability for unlawful use.*

“ 1658. *Penalties.*

“ 1659. *Sale of defective boiler prohibited.*

1639. (§ 550.) *Appointment. Salary.*—There must be appointed by the governor, by and with the advice and consent of the senate, one inspector of boilers, whose duty it is to inspect all steam boilers now in use in the state, not subject to inspection under the laws of the United States, and to examine and grant licenses to steam engineers intrusted with the care and management of steam boilers and steam machinery. The salary of the inspector of boilers is twenty-four hundred dollars per year, and his term of office is four years, unless sooner removed by the governor. The inspector of boilers must execute an official bond in the sum of five thousand dollars.

1640. (§ 551.) *Qualifications.*—No person is eligible to hold the office of inspector of boilers and steam machinery who has not had at least five years of actual practice in the operation of steam engines, steam boilers and steam machinery, or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery, or any patented article required to be sold or in general use in the construction of steam boilers or steam engines.

1641. *Assistants to boiler inspector.*—There shall be two assistant Inspectors of Boilers, each of whom shall be called Assistant Inspector of Boilers. Such Assistant Inspectors must be persons who have had at least four years practical experience in the operation of steam engines and boilers, and must be persons of temperate habits and good character and qualified to perform the duties of their office. They shall be appointed by the Governor, by and with the advice and consent of the Senate, and be subject to removal at the will of the Governor. The salary of each Assistant Inspector shall be eighteen hundred (\$1800.00) dollars per year. Each Assistant Inspector must execute an official bond in the sum of twenty-five hundred (\$2500.00) dollars. There shall be a clerk to the State Boiler Inspector to be appointed by him, who shall also when not engaged in duties as clerk of the State Boiler Inspector's office, perform such duties as clerk of the State Quartz Mine Inspector and State Coal Mine Inspector's office, as those offices may require. The salary of the Clerk to the Boiler Inspector shall be fifteen hundred (\$1500.00) dollars per year, and the clerk must execute an official bond in the sum of two thousand (\$2000.00) dollars. [Act approved February 26, 1907.] (10th Sess. Chap. 45.)

1642. *Office. Rules and regulations.*—The Inspector of Boilers must have his office at the seat of government, and must adopt

rules as nearly uniform as possible for the inspection of steam boilers, and prescribe the nature and extent of the examination of applicants for licenses and adopt such rules for the issuing thereof as are required by the provisions of this Article, and must adopt such rules as he may deem necessary to carry into effect the provisions of this Article, and distribute copies of such rules among the engineers, superintendents of mines and mining companies of the state, and all persons having charge or control of steam machinery. [*Act approved February 21, 1905, § 2.*] (*9th Sess. Chap. 32.*)

1643. (§ 554.) *Inspection of boilers.*—The inspector of boilers must inspect all steam boilers and steam generators before the same are used, except in the case of new boilers, which must be inspected within ninety days after they are put in use, unless accompanied by a certificate that such boiler has been inspected by a regular state inspector, and all boilers must be inspected at least once in every year. And the inspector of boilers must subject all boilers to hydrostatic pressure, and satisfy himself by a thorough internal and external examination, that the boilers are well made and of good and suitable materials; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in form; that the fire line of the furnace is at least two inches below prescribed minimum water line of the boilers; that the arrangement for delivering the feed water is such that the boilers cannot be injured thereby, and that such boilers and their steam connections may be safely employed without danger to life.

1644. (§ 555.) *Same.*—He must also satisfy himself that the safety valves are of suitable dimensions, sufficient in number and area, and properly arranged, and that the safety valve weights are properly adjusted, so as to allow no greater pressure in the boilers than the amount prescribed by the inspection certificate; that there are a sufficient number of gauge cocks properly inserted to indicate the amount of water, and suitable gauges that will correctly record the pressure of steam; and adequate and certain provisions for an ample supply to feed the boilers at all times, and that suitable means for blowing out are provided, so as to thoroughly remove the mud and sediment from all parts of the boilers when they are under pressure of steam. In subjecting boilers to the hydrostatic test, the inspector must assume one hundred and twenty-five pounds to the square inch as the maximum pressure allowable as a working pressure for new boilers of forty-two inches in diameter, made in the best manner, of plates one-fourth of an inch thick, and of good material; but the inspector must rate the working power of all high-pressure boilers according to their strength as compared with this standard, and in all cases the test applied must exceed the working pressure allowed, in the

ratio of one hundred to seventy-five. Should the inspector be of the opinion that any boiler, by reason of its construction, or material, will not safely allow so high a working pressure, or will allow a greater working pressure than is herein provided, he may, for reasons to be stated specifically in his certificate, fix the pressure of such boiler at more or less than three-fourths of the test pressure, as the case may be.

1645. (§ 556.) *Same. Assistant may act.*—No boiler or steam pipe, nor any of the connections thereto must be approved which is made in whole or in part of bad material, or is unsafe from any cause. Nothing herein shall be construed to prevent the use of any boiler or steam generator which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates. In any case where for good cause the inspector is unable to make any such inspection or examination of any steam boiler, it is the duty of the assistant inspector to proceed and act in accordance with the requirements of this article as fully as the inspector is empowered to do.

1646. (§ 557.) *Examination may be made at any time.*—In addition to the annual inspection, it is the duty of the inspector, or of the assistant inspector, to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause, and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

1647. (§ 558.) *Duty to permit inspection.*—It is the duty of the owners or managers of steam boilers to allow the inspectors free access to the same, and the engineer operating the same must assist the inspectors in their examinations and point out any defects they may know in the boilers or machinery in their charge. Any engineer not complying with this section shall have his license revoked or be suspended.

1648. (§ 559.) *Classification of licenses.*—No person must be granted a license to operate steam boilers or steam machinery under the provisions of this article who has not been examined by an inspector and found competent to perform the duties of an engineer and receive from such inspector a written or printed license so to act. Any person who operates any steam boiler or steam engines without first obtaining a license from an inspector or assistant inspector is guilty of a misdemeanor.

1649. *Classification of engineers.*—Engineers entrusted with the care and management of steam machinery as specified in Section 1648 (559), must be divided into three classes, namely: First class engineers, Second class engineers and Third class engineers. No license must be granted to any person to perform the duties of

first class engineer who has not taken and subscribed an oath that he has had at least three years' experience in the operation of steam boilers and steam machinery, or whose knowledge and experience is not such as to justify the belief that he is competent to take charge of all classes of steam boilers and steam machinery. No license must be granted to any person to act as second class engineer who has not taken and subscribed an oath that he has had at least two years' experience in the operation of steam boilers and steam machinery, and is, on examination, found competent to take charge of all classes of steam boilers and steam machinery, not exceeding one hundred horse power. No license must be granted to any person to act as third class engineer, who has not served at least one year as fireman under a competent engineer and found upon examination to be sufficiently acquainted with the duties of an engineer to be entrusted with steam boilers and steam machinery, not exceeding twenty horse power. All firemen who have charge of steam boilers as to the regulation of feed, water and fuel, where the boilers are so situated as not at all times to be under the eye of the engineer in charge, are required to pass a third class engineer's examination and procure the same kind of license. Engineers not holding licenses of any of the above classes and who are entrusted with the care and management of traction engines or engines or boilers on wheels, other than locomotives, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a Traction License. Such Traction License shall not entitle the holder thereof to operate any other class of steam machinery specified in Section 1648 (559). No license shall be granted to any person to act as traction engineer who is not found, upon examination, to be sufficiently acquainted with the duties of a Traction Engineer to be entrusted with the care of traction engines. [*Act approved February 21, 1905, § 3.*] (9th Sess. Chap. 32.)

1650. (§ 561.) *License revoked. Publication of notice of time of application.*—Whenever complaint is made against an engineer holding a license from the inspector, that he, through negligence, want of skill, or inattention to duty, permitted his boiler to burn, or otherwise to become in a bad condition, or that he has been found intoxicated while on duty, it is the duty of the inspector or assistant inspector to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of such engineer. The inspector and assistant inspector must, as often as convenient, publish a notice in some suitable newspaper, stating upon what days they will be in certain specified localities, and that they will then and at the time and place specified in such notice, receive applications and make examinations for the purpose of granting engineers' certificates,

and that they will examine all boilers subject to inspection in the vicinity of the place appointed.

1651. (§ 562.) *Certificate of inspection.*—In making the inspection of boilers and machinery herein provided for, the inspectors may act jointly or separately; but the inspector or assistant inspector, making such inspection, must in all cases subscribe and make oath to the certificate of inspection, and report such action. Any inspector or assistant inspector who wilfully and falsely certifies regarding any steam boilers or their attachments, or grants a license to any person to act as engineer, contrary to the provisions of this article, is punishable under the provisions of Section 8446 (635), of the Penal Code.

1652. *Fees of inspectors.*—The Inspector or Assistant Inspectors are authorized to charge a fee of ten dollars for the inspection of each single boiler and its steam connections, and five dollars for each additional boiler when connected. The fee for the inspection of each traction engine or boiler on wheels shall be ten dollars. The fee for the inspection of boilers in incorporated cities shall be five dollars. Such fees shall be payable at the time of the delivery of the inspector's certificate of inspection. The fee for the examination of applicants for engineer's licenses is \$7.50 for first class engineers, \$5.00 for second class engineers, \$3.00 for third class engineers and \$3.00 for traction engineers; to be paid at the time of the application for license. In case of the failure of any applicant to pass a successful examination ninety days must elapse before he can again be examined as an applicant for license in the class for which he was examined. But the Inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineer's licenses must be displayed in a conspicuous place in the engine room. [Act approved February 21, 1905, § 4.] (9th Sess. Chap. 32.)

1653. (§ 564.) *Re-examination for license.*—If any person who has applied for a license as a first or second or third-class engineer, under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within ninety after the date of his rejection, by petition in writing, set forth the causes of his grievance and demand another examination. Such petition must be addressed to and served upon the inspector, and shall be duly verified by the rejected applicant, and accompanied by the required fee for a second examination. Within two days after receiving such petition and fee, it is the duty of the inspector to notify the applicant in writing that on a day certain, which shall not be less than five nor more than forty days after the date of the service of the petition upon such inspector, he will be ready to grant him another examination. At least two days before the day set for examination

the applicant must designate in writing to such inspector the name of an engineer holding a certificate of equal grade with the one applied for and such engineer may present himself upon the day and at the hour fixed for the re-examination.

1654. (§ 565.) *A board to re-examine applicants.*—Upon the same day, or any day prior to the date set for such examination, the inspector and selected engineer must in writing agree upon and designate and notify a third disinterested engineer holding a license equal in grade to the license applied for by the rejected applicant, to sit with them. On the day and hour set for such examination all three of such board, that is, the inspector and the engineer selected by the applicant and the engineer agreed upon by them, must proceed to carefully re-examine such applicant and fully and fairly test his qualifications and capabilities to receive a license such as he has applied for. After such examination is completed, if a majority of such board decide that such applicant is entitled to the license he has applied for, or any license of any inferior grade, the inspector must without delay issue a certificate accordingly, but if a majority of such board reject the applicant, it is a final rejection, and he must not be granted another examination for the space of ninety days after such last rejection, when he may again apply to the inspector or assistant inspector as provided by Section 1652 (563) of this article, and no person must be granted more than one re-examination before a board under the provisions of this article. One-half of the fee which may have accompanied any rejected applicant's petition for re-examination must be awarded by the inspector to each of the engineers who sit on any such examining board, and in case the applicant is granted a license the fee paid when he was first rejected is the fee for the issuing of such license granted by any board. In any case any engineer selected or agreed upon as by this section is provided, fails or neglects to appear or serve, another may be selected in his place in the manner herein provided.

1655. *Locomotives and low pressure boilers exempted.*—This Article does not apply to locomotives in Montana, nor to boilers used for heating purposes in private residences, nor to any boiler having a capacity of only five horse power or less; nor are locomotive engineers or persons operating any of the engines or boilers herein exempted from the operation of this Article, required to procure licenses from the Inspector or Assistant Inspectors. It shall be the duty of the owner or user of any traction engine or boiler on wheels, other than locomotives, to notify the Inspector of the location of such boiler on or before the first day of June in each year. Any owner or user of such engine or boiler failing to so notify the Inspector shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. [Act approved February 21, 1905, § 5.] (9th Sess. Chap. 32.)

1656. *Certificates must be renewed yearly. Annual report.*—All certificates of license to engineers of all classes shall be renewed yearly. The fee for renewal is \$1.00 in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward this fee for an original license of the same grade before license can be re-issued. All moneys collected by virtue of this Article must be paid in to the State Treasury at least as often as once in each month. The Inspector of Boilers must make an annual report to the Governor on the tenth day of December of each year, setting forth the moneys collected by himself and the Assistant Inspectors from any and all sources, and the disbursements, and the number of boilers inspected by them, and the number and grades of licenses issued by them and to whom, and the general results and experiences of his office, and such recommendations as to him may seem fit and proper. Said report must also refer to and account for the causes of any boiler explosions which may have occurred in the State during the year, and the loss of life or property resulting therefrom. [Act approved February 21, 1905, § 6.] (9th Sess. Chap. 32.

1657. (§ 568.) *Liability for unlawful use.*—It is unlawful for any person in the state to operate a stationary boiler or steam-engine other than railroad locomotives or other engines and boilers exempted in § 1655 (566) of this article, without a license granted under the provisions of this article. The owner, renter, or user of the steam engine or boiler is equally liable for violations of this section. But in case of accident, sickness, refusal to work, or any unforeseen prevention of the licensed engineer employed by any owner, renter or user of a steam engine or boiler, operated in remote districts, which would retard the work to be performed, the owner, renter or user may, for the space of four weeks, employ any person not having a license, whom he may consider competent, to run the engine or boiler. The person so employing the unlicensed engineer must immediately notify the inspector or assistant inspector.

1658. (§ 569.) *Penalties.*—All violations of the provisions of this article are provided for in the Penal Code, § 8444 (633) to 8446 (635) and 8468 (657.)

1659. *Sale of defective boiler prohibited.*—Any person who offers for sale within this State a boiler subject to the provisions of this Article, which has been in use and is out of service, or who brings into the state and places in service any such boiler which has heretofore been in use in any other state, without first notifying the Boiler Inspector, and having such boiler inspected, and securing from the Inspector a certificate of such inspection, shall be punished by a fine of not less than one hundred dollars

nor more than five hundred dollars for each offense. [*Act approved February 21, 1905, § 7.*] (9th Sess. Chap. 32.)

ARTICLE. X.

BUREAU OF CHILD AND ANIMAL PROTECTION.

- Sestion 1660. Bureau created.*
 “ 1661. *Secretary. Salary. Duties.*
 “ 1662. *Office of secretary*
 “ 1663. *Report of secretary.*
 “ 1664. *Deputies.*
 “ 1665. *Clerk to secretary.*
 “ 1666. *Secretary's clerk.*
 “ 1667. *Expenses of secretary.*
 “ 1668. *Duties of secretary.*
 “ 1669. *Authority of secretary.*

1660. *Bureau created.*—That there is hereby created a State Bureau of Child and Animal protection, for the purpose of enforcing the laws of the State of Montana, pertaining to children and dumb animals which may now or hereafter exist; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals. [*Act approved March 4, 1905, § 1.*] (9th Sess. Chap. 96.)

1661. *Secretary. Salary. Duties.*—The Governor of the State is hereby authorized and empowered to appoint a Secretary at a salary of eighteen hundred (\$1800.00) per annum, payable monthly, who shall be Chief of the Bureau, and whose duty it shall be to carry out the purposes of said Bureau, as hereby established. [*Act approved February 19, 1907, § 2.*] (10th Sess. Chap. 19.)

1662. *Office of Secretary.*—That the said Secretary shall be provided with a suitable office at the capitol; the usual supply and necessary printed matter for the office shall be furnished on requisition by the secretary in the same manner as for other State Officers. [*Act approved March 4, 1905, § 3.*] (9th Sess. Chap. 96.)

1663. *Report of Secretary.*—That the said Secretary shall make a biennial report to the Governor of the State, embracing the proceedings of the Bureau and statistics showing the work of the Bureau, together with such papers, facts and recommendations as the Secretary may deem useful to the interest of children and dumb animals in the State, said report to be fully prepared for publication. The Secretary of State shall cause the same to be published in pamphlet or book form by the State under the supervision of said Secretary, *provided* that not to exceed \$100.00 shall be expended for printing said report. [*Act approved March 4, 1905, § 4.*] (9th Sess. Chap. 96.)

1664. *Deputies.*—The Secretary shall have power to appoint two deputies. Such deputies shall take and subscribe the same oath required by the principal, and the same shall be of record in the Secretary's office. The deputies shall have the same power and authority as vested by law in the principal, and shall have a salary of one hundred twenty-five (\$125.00) dollars per month, payable monthly out of the public treasury. They shall make full and complete reports every month to said principal, showing all their official acts, with names of persons accused and against whom prosecutions may have been instituted, and the results thereof. Said deputies may be removed, at any time, by the Secretary, and another appointed to fill the vacancy. One of said deputies shall have his headquarters in the County of Silver Bow, and shall have authority to operate in other counties, when called or directed by the Secretary of the Bureau. [*Act approved February 19, 1907, § 2.*] (10th Sess. Chap. 19.)

1665. *Clerk to Secretary.*—The said Secretary of the Bureau of child and Animal Protection, provided for in said Act, shall be, and is hereby authorized and empowered to appoint and have one clerk, who shall be paid out of the public treasury a monthly salary, not exceeding fifty (\$50.00) dollars. [*Act approved February 19, 1907, § 3.*] (10th Sess. Chap. 19.)

1666. *Secretary's Clerk.*—The said secretary shall have the power, at any time that he deems it best for the public interest, to dispense with the services of the said clerk for a limited space of time, or for all the time. [*Act approved March 4, 1905, § 7.*] (9th Sess. Chap. 96.)

1667. *Expenses of Secretary.*—No warrant shall be issued by the Auditor of the State, for expenses or other costs incident to the execution of the duties of the said secretary or his deputy until itemized accounts properly verified shall be presented by the person to whom the warrant is to be issued, nor until the same is certified to, as correct by the State Board of Examiners. Upon presentation of said account duly verified and certified as above, the State Auditor shall draw a warrant in favor of the party or parties, entitled thereto, for the amount so certified. [*Act approved March 4, 1905, § 8.*] (9th Sess. Chap. 96.)

1668. *Duties of Secretary.*—The secretary of the Bureau of Child and Animal Protection or the deputy so appointed by him, are hereby authorized and empowered when in extreme cases of cruelty or neglect, in their judgment it is absolutely necessary to protect minor children, under eighteen years of age, to seize the same and have them cared for at the expense of the county, in which they reside, until a judicial inquiry can be made as to their condition by the courts of said county; and it is hereby made the duty of said secretary or deputy to institute proceedings for a judicial investigation into the condition of such child

or children, and the same to be disposed of by said court, according to the state laws relating to minor children, and it is made the duty of the Board of County Commissioners, in the county, in which such child or children reside to pay for the care, or maintenance of such child or children upon presentation of vouchers properly verified, until final disposition of such child or children is made by order of the court. [*Act approved March 4, 1905, § 9.*] (*9th Sess. Chap. 96.*)

1669. *Authority of Secretary.*—The Secretary is hereby vested with authority to make arrests of any person, or persons, violating any provisions of the laws relating to wrongs to children and dumb animals, and is hereby further vested with the authority to enter work-shops, factories, stores, mines, mills and smelters, and all other places where children may be employed, and do what may be necessary in the way of investigation, or otherwise, to enforce the laws pertaining to minor children and animals. [*Act approved February 19, 1907, § 4.*] (*10th Sess. Chap. 19.*)

CHAPTER II.

REGULATION CONCERNING LABOR.

- ARTICLE I. ARBITRATION.
- II. REGULATION OF THE INDUSTRY OF COAL MINING.
- III. REGULATION OF THE INDUSTRY OF MINING.
- IV. REGULATION FOR THE PROTECTION OF STREET CAR EMPLOYEES.
- V. HOURS AND REGULATION OF LABOR.
- VI. PROHIBITIONS AGAINST CHILD LABOR.
- VII. PROTECTION OF DISCHARGED EMPLOYEES, AND THE PREVENTION OF BLACK LISTING.

ARTICLE I.

ARBITRATION.

- Section 1670. *State board of arbitration.*
- “ 1671. *Who may be appointed.*
- “ 1672. *Oath, and how organized.*
- “ 1673. *Settlement of controversies.*
- “ 1674. *Application, how made.*
- “ 1675. *Report.*
- “ 1676. *The decision; when binding.*
- “ 1677. *Parties may agree to special board of arbitration.*
- “ 1678. *Compensation.*

1670. (§ 3330.) *State board of arbitration.*—There is a state board of arbitration and conciliation consisting of three members, whose term of office is two years and until their succes-

sors are appointed and qualified. The board must be appointed by the governor, with the advice and consent of the senate. If a vacancy occurs at any time the governor shall appoint some one to serve out the unexpired term, and he may in like manner remove any member of said board. [*Act approved March 15, 1895.*]

1671. (§ 3331.) *Who may be appointed.*—One of the board must be an employer, or selected from some association representing employers of labor; and one of them must be a laborer, or selected from some labor organization, and not an employer of labor, and the other must be a disinterested citizen.

1672. (§ 3332.) *Oath, and how organized.*—The members of the board must, before entering upon the duties of their office, take the oath required by the constitution. They shall at once organize by the choice of one of their number as chairman. Said board may appoint and remove a clerk of the board, who shall receive such compensation as may be allowed by the board, but not exceeding five dollars per day for the time employed. The board shall, as soon as possible after its organization, establish such rules or modes of procedure as are necessary, subject to the approval of the governor. [*Act approved March 15, 1895.*]

1673. (§ 3333.) *Settlement of controversies.*—Whenever any controversy or dispute, not involving questions which may be the subject of a civil action, exists between an employer (if he employs twenty or more in the same general line of business in the state) and his employees, the board must, on application as is hereinafter provided, visit the locality of the dispute and make inquiry into the cause thereof, hear all persons interested therein, who may come before them, advise the respective parties what, if anything, ought to be done, by either or both, to adjust said dispute, and the board must make a written decision thereon. The decision must at once be made public, and must be recorded in a book kept by the clerk of the board, and a statement thereof published in the annual report, and the board must cause a copy thereof to be filed with the clerk of the county where the dispute arose.

1674. (§ 3334.) *Application, how made.*—The application to the board of arbitration and conciliation must be signed by the employer, or by a majority of his employees in the department of the business in which the controversy or difference exists, or their duly authorized agent or by both parties, and shall contain a concise statement of the grievances complained of, and a promise to continue on in business or at work without any lockout or strike until the decision of said board if it shall be made within four weeks of the date of filing said application. When an application is signed by an agent claiming to represent a majority of such employees, the board shall satisfy itself that such agent

is duly authorized in writing to represent such employes, but the names of the employes giving such authority shall be kept secret by said board; as soon as may be after the receipt of said application the secretary of said board shall cause public notice to be given for the time and place for the hearing thereon; but public notice need not be given when both parties to the controversy join in the application and present therewith a written request that no public notice be given; when such request is made notice shall be given to the parties interested in such manner as the board may order; and the board may, at any stage of the proceedings, cause public notice to be given, notwithstanding such request. When notice has been given as aforesaid; each of the parties to the controversy, the employer on one side, and the employes interested on the other side, may in writing nominate, and the board may appoint, one person to act in the case as expert assistant to the board. The two persons so appointed shall be skilled in and conversant with the business or trade concerning which the dispute has arisen. It shall be their duty, under the direction of the board, to obtain and report to the board, information concerning the wages paid, the hours of labor and the methods and grades of work prevailing in manufacturing establishments, or other industries or occupations, within the state of a character similar to that in which the matters in dispute have arisen. Said expert assistants shall be sworn to the faithful discharge of their duty; such oath to be administered by any member of the board, and a record thereof shall be preserved with the record of the proceedings in the case. They shall be entitled to receive from the treasury of the state such compensation as shall be allowed and certified by the board not exceeding——dollars per day, together with all necessary traveling expenses. Nothing in this act shall be construed to prevent the board from appointing such other additional expert assistant or assistants as it may deem necessary, who shall be paid in like manner. Should the petitioner or petitioners fail to perform the promise made in said application, the board shall proceed no further thereupon without the consent of the adverse party. The board shall have power to summon as witness any operative or employe in the department of business affected and any person who keeps the records of wages earned in those departments, and to examine them under oath, and to require the production of books containing the record of wages paid. Summons may be signed and oaths administered by any member of the board. [*Act approved March 15, 1895.*]

1675. (§ 3335.) *Report.*—Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board,

and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year. [*Act approved March 15, 1895.*]

1676. (§ 3336.) *The decision; when binding.*—Any decision made by the board is binding upon the parties who join in the application for six months, or until either party has given the other notice in writing of his intention not to be bound by the same at the expiration of sixty days therefrom. The notice must be given to employes by posting the same in three conspicuous places in the shop, office, factory, store, mill or mine where the employes work.

1677. (§ 3337.) *Parties may agree to special board of arbitration.*—The parties to any controversy or difference as described in § 1673 (3333) of this code may submit the matters in dispute, in writing, to a local board of arbitration and conciliation; such board may be either mutually agreed upon, or the employer may designate one of the arbitrators, the employes, or their duly authorized agent, another, and the two arbitrators so designated may choose a third, who shall be chairman of the board. Such board shall, in respect to the matters referred to it, have and exercise all the powers which the state board might have and exercise, and its decision shall have whatever binding effect may be agreed upon by the parties to the controversy in the written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the state board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the clerk of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the state board and entered on its records. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference that is the subject of the arbitration exists, if such payment shall be approved by the commissioners of said county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration. Whenever it is made to appear to the mayor of any city or two commissioners of any county, that a strike or lockout such as described hereafter in this section is seriously threatened or actually occurs, the mayor of such city, or said commissioners of such county, shall at once notify the state board of the fact. Whenever it shall come to the knowledge of the state board, either by notice from the mayor of a city, or two or more commissioners of a county, as provided in this section, or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any city or county of this state, involving an employer and his present or past employes, if at the time he is employing or up to the occur-

rence of the strike or lockout was employing not less than twenty persons in the same general line of business in any city, town or county in this state, it shall be the duty of the state board to put itself in communication as soon as may be with such employer and employes, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them, providing that a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation as above provided, or to the state board; and said state board may, if it deems it advisable, investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes, and assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by § 1673 (3333) of this code. Witnesses summoned by the state board shall be allowed the sum of fifty cents for each attendance, and the further sum of twenty-five cents for each hour of attendance in excess of two hours, and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be certified to the state board of examiners for auditing, and the same shall be paid as other expenses of the state from any moneys in the state treasury. [Act approved March 15, 1895.]

1678. (§ 3338.) *Compensation.*—The arbitrators hereby created must be paid five dollars for each day of actual service and their necessary traveling expenses and necessary books or records, to be paid out of the treasury of the state, as by law provided.

ARTICLE II.

REGULATION OF THE INDUSTRY OF COAL MINING.

Section 1679. Appointment of coal mine inspector; term of office.

“ 1680. *Qualifications of inspector.*

“ 1681. *Salary of inspector.*

“ 1682. *Powers and duties of inspector.*

“ 1683. *Inspector must not be employed by companies.*

“ 1684. *Instruments to be furnished inspector.*

“ 1685. *Inspector must post statement of condition of mine at entrance.*

“ 1686. *Temporary vacancies.*

“ 1687. *Coal mine inspector ex-officio sealer of weights and measures.*

- Section 1688. Standard test weights to be furnished.*
- “ 1689. *Refusal of mine operator to furnish facilities for examination.*
- “ 1690. *Investigation of charges for neglect of duty.*
- “ 1691. *Penalties for violation of duty.*
- “ 1692. *Maps of coal mines to be furnished inspector.*
- “ 1693. *Additions to the map to be made, when.*
- “ 1694. *Failure to provide maps.*
- “ 1695. *Coal mine escapes.*
- “ 1696. *Escapes how constructed.*
- “ 1697. *Ventilation of coal mines.*
- “ 1698. *Ventilation enforced by the inspector.*
- “ 1699. *Examination for explosive gases.*
- “ 1700. *Unlawful working of coal mines.*
- “ 1701. *Foreman must have certificate from inspector and incompetent persons not to be employed.*
- “ 1702. *Ventilation furnaces, how built.*
- “ 1703. *Hoisting and lowering into the mine.*
- “ 1704. *Signals, cage, how loaded, and protection.*
- “ 1705. *Same.*
- “ 1706. *Penalties.*
- “ 1707. *State to furnish appliances.*
- “ 1708. *Duty of mine operator to furnish wash houses for employees.*
- “ 1709. *Check weighmen.*
- “ 1710. *False weights. Penalty.*

1679. *Appointment of coal mine inspector; term of office.*—The Governor, by and with the advice and consent of the Senate, shall appoint one coal mine inspector who shall hold office for a term of four years from the date of his appointment, unless otherwise removed by the Governor. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 133.)

1680. *Qualifications of inspector.*—No person shall be eligible to the office of coal mine inspector until he shall have attained the age of thirty years, must be a citizen of the United States, a qualified resident of the state of Montana and been actually employed at coal mining ten years prior to his appointment and shall possess a competent knowledge of all the different systems of coal mining and working and properly ventilating coal mines, and the nature and constituent parts of noxious and explosive gases of coal mines, and of the various ways of expelling the same from the said mines. Said inspector shall be a graduate of some recognized school of mines. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 133.)

1681. *Salary of inspector.*—The salary of the state coal mine inspector shall be Twenty-five Hundred Dollars per annum and all necessary and traveling expenses; the state coal mine in-

inspector shall file with the state treasurer a bond, approved by the Governor of the state, in the sum of Five Thousand Dollars, for the faithful performance of his duties. [*Act approved March 7, 1907, § 3.*] (*10 Sess. Chap. 133.*)

1682. *Powers and duties of inspector.*—The state coal mine inspector shall have the right and it is hereby made his duty, to enter, inspect, and examine any coal mine in this state, and the workings and the machinery belonging thereto, at all reasonable times, either by day or night, but not so as to impede or obstruct the workings of the mine. He shall also have the right and it is his duty to make inquiry into the condition of such mine, workings, machinery, scales, ventilation, drainage, method of lighting or using lights, and into all methods and things connected with or relating to, as well as to make suggestions providing for the health and safety of persons employed in or about the same, and especially to make inquiry whether or not the provisions of the acts providing for the regulation of coal mines, or other acts which may hereafter be enacted governing coal mines, have been complied with. The owner, operator or superintendent of such mine is hereby required to furnish the means necessary for such entry, inspection, examination inquiry and exit. It shall also be the duty of the said coal mine inspector to carefully examine all the coal mines in operation in this state at least every three months and oftener if necessary; to see that every precaution is taken to insure the safety of all workmen that may be engaged in said coal mine. The said inspector shall make a record of the visit, noting the time and the material circumstances of the inspection. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 133.*)

1683. *Inspector must not be employed by companies.*—The said coal mine inspector while in office shall not act as agent for any corporation, superintendent or manager of any mines, and shall in no manner whatever be under the employ of mining companies, and it shall be the duty of the said coal mine inspector on or before the first day of January of every year, to make a report to the Governor of his proceedings as such coal mine inspector and the conditions of each and every coal mine in the state, stating therein all accidents that have happened in or about said mine or mines, and to set forth in said report all such suggestions as he may deem important as to any further legislation on the subject of coal mining. [*Act approved March 7, 1907, § 5.*] (*10th Sess. Chap. 133.*)

1684. *Instruments to be furnished inspector.*—For the more efficient discharge of the duties herein imposed upon him, the said coal mine inspector shall be furnished at the expense of the state, with an anemometer, a safety lamp and whatever other instruments or other appliances which may be required in order

to carry into effect the provisions of the acts regulating coal mines. [*Act approved March 7, 1907, § 6.*] (*10th Sess. Chap. 133.*)

1685. *Inspector must post statement of condition of mine at entrance.*—The coal mine inspector shall post up in some conspicuous place at the top of each mine visited and inspected by him, a plain statement of the conditions of such mine, showing what in his judgment is necessary for the better protection of the lives and health of persons employed in said mine; such statement shall give the date of inspection and be signed by the said inspector. He shall also post a notice at the landing used by the men stating what number of men may be permitted to ride on the cage, car or cars at one time, and at what rate of speed men may be hoisted and lowered on the cage, car or cars. He must observe especially that the code of signals provided in the act regulating coal mines, between engineer and top men and bottom men, is conspicuously posted for the information of all employes. In case of the death, resignation or removal from office of the state coal mine inspector before the expiration of the term of office, the Governor shall appoint a duly qualified person as provided in this act, to fill the vacancy for the unexpired term. [*Act approved March 7, 1907, § 7.*] (*10th Sess. Chap. 133.*)

1686. *Temporary vacancies.*—In case the state coal mine inspector becomes incapacitated and cannot perform the duties of his office for a period longer than two weeks, it shall be the duty of the Governor to deputize some competent person having the qualifications provided in this act, to fulfill the duties of the said inspector until the said inspector shall return to the performance of his official duties and the person deputized by the Governor shall be paid by the state out of any moneys in the general fund of the state not otherwise appropriated, for the services rendered, at the same rate received by the state coal mine inspector. [*Act approved March 7, 1907, § 8.*] (*10th Sess. Chap. 133.*)

1687. *Coal mine inspector ex-officio sealer of weights and measures.*—The state coal mine inspector is hereby made, equally with the county clerk, ex-officio sealer of weights and measures, in so far as the same relates to coal mines and coal mining, and as such is empowered to test and compare all weights and measures used in weighing and measuring coal at any coal mine, or used in measuring air passages or other openings in coal mines, with the standards of weights and measures kept by the county clerk of any county. Upon the written request of any coal mine owner or operator or ten coal miners employed at any one mine, it shall be his duty to test and prove any scale or scales at such mine against which complaint is directed, and if he shall find that they or any of them do not weigh correctly, he shall call the attention

of the mine owner or operator to the fact and direct that said scale or scales be at once overhauled and readjusted so as to indicate only true and correct weights, and he shall forbid the further operation of such scale until such scales are adjusted. In the event that such tests shall conflict with any test made by any county sealer of weights and measures, or under and by virtue of any municipal ordinance or regulation, then the test by such mine inspector shall prevail. [*Act approved March 7, 1907, § 9.*] (*10th Sess. Chap. 133.*)

1688. *Standard test weights to be furnished.*—For the purpose of carrying out the provisions of this act, the state coal mine inspector shall be furnished by the state with a complete set of standard weights suitable for testing the accuracy of track scales, and of all smaller scales at mines; said test weights shall remain in the custody of the state coal mine inspector for use at any point within the state, and for any amounts expended by him for the storage, transportation or the handling of the same, he shall be fully reimbursed upon making entry of the proper items in his expense voucher. [*Act approved March 7, 1907, § 10.*] (*10th Sess. Chap. 133.*)

1689. *Refusal of mine operator to furnish facilities for examination.*—If any operator shall refuse to permit such inspection or to furnish the necessary facilities for making such examination and inspection, the inspector shall file his affidavit, setting forth his refusal, with the judge of the district court in said county in which said mine is situated, either in term-time or vacation, and obtain an order on such owner, operator or agent so refusing as aforesaid, commanding him to permit and furnish such necessary facilities for the inspection of such coal mine, or to be adjudged to stand in contempt of court and punished accordingly. [*Act approved March 7, 1907, § 11.*] (*10th Sess. Chap. 133.*)

1690. *Investigation of charges for neglect of duty.*—Whenever a petition signed by fifty or more reputable citizens, legal residents of the state, verified by oath by two or more of the said petitioners, and accompanied by a bond in the sum of Five Hundred Dollars, running to the state, executed by two or more Freeholders, approved and accepted by the clerk of the district court of the county or counties of their residence, conditioned for the payment of all costs and expenses arising from the investigation of the charges, setting forth that the inspector of mines neglects his duties or is incompetent, or is guilty of malfeasance in office, it shall be the duty of the judge of the district court of the county, to issue a citation in the name of the state to the said inspector, to appear at not less than five days' notice, on a day fixed, before said court, and the court shall then proceed to inquire into and investigate the allegations of the petitioners; such action shall be prosecuted by the county attorney. [*Act approved March 7, 1907, § 12.*] (*10th Sess. Chap. 133.*)

1691. *Penalties for violation of duty.*—If the court finds that the said coal mine inspector is neglectful of his duties or incompetent to perform the duties of his office, or that he is guilty of malfeasance in office, the court shall certify the same to the Governor, who shall declare the office of said mine inspector vacant, and proceed in compliance with the provisions of this act to supply the vacancy; and the costs of such investigation shall, if the charges are sustained, be imposed upon the state coal mine inspector. [*Act approved March 7, 1907, § 13.*] (10th Sess. Chap. 133.)

1692. (§ 3350.) *Maps of coal mines to be furnished inspector.*—The owner or operator of any coal mine in the state must make, or cause to be made, an accurate map or plan of the mine, which must exhibit the openings or excavations, the shafts, slopes, or tunnels, the entries, rooms, or other workings, must show the direction of the air currents therein, accurately delineate the surface section lines of the coal lands controlled by the owner of said mines and show the exact relation to and the proximity of the workings of said mine to said surface lines, said map, or plan, must also show the exact date of such survey made, and indicate the boundary line of the most advanced face of the workings at such date; and in case more than one seam of coal is opened or worked, a separate map or plan as aforesaid, must, if desired by the inspector, be made of the working in each seam. The map, or plan, or a true copy thereof, with the record of all surveys of said boundary lines and underground workings, must be delivered to the state inspector of mines, and the original or a true copy of the same must be retained for reference and inspection at the office of the coal mine. The maps and plans so delivered to the inspector of mines are the property of the state, and must be transferred to his successor in office. Maps of mines filed with the inspector must be open to the examination of the public in the presence of the inspector, but in no case must any copy of the same be made without the consent of the owner, operator, or his agent.

1693. (§ 3351.) *Additions to the map to be made, when.*—After the maps and plans herein provided are completed, thereafter in July of each year, the owner or operator of every coal mine must cause surveys to be made of all alterations and extensions of the workings made during the year preceding, and must have the records and results of the survey duly entered upon the maps of the inspector, and upon that kept at the mine. The said extensions must be placed upon the inspector's map, and the map returned to the inspector within thirty days from the completion of the survey. When any coal mine is worked out, and is about to be abandoned, the owner or operator must have the maps or plans thereof to include all excavations made, showing the most ad-

vanced workings of every part of the mine and the relation of such boundaries to marked boundaries on the surface.

1694. (§ 3352.) *Failure to provide maps.*—Whenever the owner or operator of any coal mine neglects or refuses to furnish the inspector the map or plan of such coal mine, or the extensions thereto, as provided for in this chapter, the inspector is authorized to make, or cause to be made, an accurate map or plan of such coal mine, at the expense of the owner, and the cost may be recovered from the owner or operator, in the same manner as other debts, in the name of the state.

1695. (§ 3353.) *Coal mine escapes.*—For all coal mines in this state, when more than six men are employed, other than the owners or operators of such mine, whether worked by shaft, slope or drift, there must be provided and maintained in addition to the hoisting shaft or opening, a separate escapement shaft or opening to the surface, or an underground opening or communication between every such mine and some other contiguous mine, as may be approved by the mine inspector, as coming within the requirements of this chapter, which openings constitute two separate and available means of ingress and egress to all persons employed in the mine, and all passage-ways communicating with the escapement shaft, or places of exit from main hauling-ways to escapement shafts, must be at least five feet wide and five feet high.

1696. (§ 3354.) *Escapes how constructed.*—Every escapement shaft must be separated from the main shaft by such extent of natural strata as shall secure safety to the men employed in such mines, and provided with either stairways, or cages and hoisting apparatus, as in the judgment of the inspector of mines may be sufficient to insure the safe and speedy removal of all persons within the mine in case of danger. No obstructions of any kind must be permitted in any escapement shaft that would in any way impede travel through the same. The time allowed for completing such escapement shaft or making such communication with an adjacent mine, as is required by the terms of this chapter, is for all mines already opened or in process of development on the sixth day of March, 1891, one year for sinking any shaft two hundred feet or less in depth, and one additional year or pro rata portion thereof for every additional two hundred feet or fraction thereof; but for mines which are opened thereafter, the time allowed shall be two years for all shafts more than two hundred feet in depth, and one year for all shafts two hundred feet or less in depth, and the time must be reckoned in all cases from the date on which coal is first hoisted from the original shaft for sale or use, and it is the duty of the inspector of mines to see that all escapement shafts are begun in time to secure the completion within the time herein specified.

1697. (§ 3355.) *Ventilation of coal mines.*—The owner or operator of every coal mine, whether operated by shaft, slope or drift, must provide and maintain for every such mine a good and sufficient amount of ventilation for men and animals employed therein; the amount of air in circulation to be in no case less than one hundred cubic feet for each man, and six hundred cubic feet for each animal per minute, measured at the foot of the down-cast, and the same to be increased at the discretion of the inspector according to the character and extent of the workings, or to the amount of powder used in blasting, and the volume of air must be forced and circulated to the face of every working place throughout the mine, so that the mine is free from standing powder smoke and gases of every kind. All doors set on main entries for the purpose of conducting ventilations must be so constructed and hung as to close of themselves when opened, and must be made sufficiently tight to effectually obstruct the air currents.

1698. (§ 3356.) *Ventilation enforced by the inspector.*—In all the larger mines, a suitable person as doorkeeper must be kept in attendance upon such doors, to see that they are kept securely closed and the air currents properly controlled. Whenever the inspector finds men working without sufficient air under any unsafe conditions, he must first give the owner or operator a reasonable notice to rectify the same; upon the neglect or refusal of the owner or operator of the mine to put the same in a safe condition, as required by the inspector, the inspector must proceed by an action to enjoin the further workings of the mine until the law is complied with. All actions for an injunction must be brought by the county attorney, or by the attorney general in the name of the state.

1699. (§ 3357.) *Examination for explosive gases.*—All mines in which explosive gases are known to exist must be examined every morning by a duly authorized agent of the owner or operator, to determine whether there are any dangerous accumulations of gases or lack of ventilation or obstructions to roadways or any other dangerous conditions, and no person must be allowed to enter the mine until the agent has reported all the conditions safe for beginning work; the agent must make a daily record of the condition of the mine in a book kept for that purpose, which shall be open at all times to the examination of the inspector. The current of air in mines must be split, so as to give a separate current to at least every one hundred men at work, and the inspector has the discretion to order a separate current for a smaller number of men if special conditions render it necessary. In case the entries or roadways of any mine are so dry as to become filled with dust, the owner or operator of the mine is required to have such roadways regularly and thoroughly sprinkled, and it is the

duty of the inspector to see that in all mines every practicable precaution is taken against accidents from the careless handling of powder within the mine.

1700. (§ 3358.) *Unlawful working of coal mines.*—In no case must more powder be stored in the mine at any one time than in the discretion of the inspector is necessary for each day's use. It is unlawful for coal miners in any mine to charge a blasting hole with the loose powder or otherwise than with the properly constructed cartridge; and in dry and dusty mines it is unlawful to load cartridges in the mines except with powder cans constructed for the purpose. It is unlawful for the owner or operator of any mine to permit miners to work in said mines with tools prohibited by law. It is unlawful for any owner or operator of any mine where dangerous or explosive gases are known to exist to employ any person as foreman or boss of said mine, who does not possess a thorough, practical knowledge of the nature and danger of inflammable or explosive gases and understand the means and appliances for controlling them. It is unlawful for any person to act as foreman or mine boss of any mine in which inflammable gases are known to exist, who does not possess a thorough, practical knowledge of the nature and danger of inflammable or explosive gases, and understand the means and appliances for controlling them.

1701. (§ 3359.) *Foremen must have certificate from inspector and incompetent persons not to be employed.*—It is unlawful for any person to act as foreman or mine boss of any mine in which inflammable gases are known to exist, who does not possess a certificate from the state mine inspector certifying to his competency for managing the underground workings of mines, together with a thorough knowledge of all gases met with in coal mines and of the most approved means of appliances for controlling them, and the inspector of mines is authorized to examine all foremen or mine bosses upon their competency under the provisions of this chapter and issue his certificate to those whom he considers qualified to act as such foreman or boss within the meaning of this law. It is unlawful for any owner or operator of a coal mine to employ persons underground whose duties may involve contact with inflammable gases or the handling of explosives, who have not had experience in such duties, unless all such employes are placed under the immediate charge and instruction of such number of competent men as to secure the safety of other persons employed in the same mine.

1702. (§ 3360.) *Ventilation furnaces, how built.*—The ventilation required by this chapter may be produced by any suitable appliances, but in case a furnace is used for ventilating purposes, it must be built in such a manner as to prevent the communication of fire to any part of the works by lining the upcast

with incombustible material for a sufficient distance up from the furnace. It is unlawful to use a furnace for ventilating purposes or for any other purpose that emits smoke into any compartment constructed in or adjoining any hoisting shaft or slope where the hoisting shaft or slope is the only means provided for the ingress or egress of persons employed in said coal mines. It is unlawful, where there is but one means of ingress and egress provided at a coal shaft or slope, to construct and use a ventilating furnace that emits smoke into a shaft as an upcast where the shaft or slope used as a means of ingress and egress by persons employed in said coal mines is the only means provided for furnishing air for persons employed therein.

1703. (§ 3361.) *Hoisting and lowering into the mine.*—The owner or operator of a coal mine operated by shaft must provide safe means of hoisting and lowering persons in a cage covered with boiler iron, so as to keep safe as far as possible persons descending into and ascending out of said shaft, and said cage must be furnished with guides to conduct iron slides through such shaft, with a sufficient brake on every drum to prevent accident in case of the giving out or breaking of the machinery; and such cages must be furnished with safety catches intended and provided, as far as possible to prevent accident in case of cable breaking or the loosening or disconnecting of machinery. The owner or operator of every coal mine operated by shaft and steam power must place competent persons at the top and bottom of such shaft for the purpose of attending to signals while the men are being lowered or hoisted out of the mine; they must be at their post of duty at least thirty minutes before the hoisting of coal is commenced in the morning and remain at least thirty minutes after the hoisting of coal has ceased at night. It is also their duty to see that the men do not carry any tools, timber, or material with them on the cage, and that only the proper number of men are allowed upon the cage at one time. A sufficient light must be furnished at the top and bottom of the shaft to insure as far as possible the safety of persons getting on or off the cage.

1704. (§ 3362.) *Signals, cage, how loaded, and protection.*—A suitable code of signals between the bottom man and the top man and engineer must be established to provide and insure the safety of persons being lowered into and hoisted out of any shaft; said code of signals so established must be conspicuously posted at the top and bottom of the shaft and in the engine room. No person must ride upon a loaded cage or car used for hoisting purposes in any shaft or slope, and in no case must more than twelve persons ride in any cage or car at any one time, nor must any coal be hoisted out of any coal mine, except in cases where coal is being hoisted out of a slope which is not less than ten feet wide and only one track operated therein, while persons are de-

scending into such mine. The number of persons permitted to ascend out of or descend into any coal mine at one time must be determined by the inspector, and they must not be lowered or hoisted more rapidly than five hundred feet per minute. The top of each and every shaft and the entrance to each and every intermediate working vein must be securely fenced by gates, properly protecting such shaft and the entrance thereto, and the entrance to every abandoned stope, air or other shaft must be securely fenced off.

1705. (§ 3363.) *Same.*—All underground, self-acting or engine planes, with single track, on which coal cars are drawn and persons travel, must be provided with proper means of signaling between the stopping places and ends of said planes, and sufficient places of refuge at the sides of such planes must be provided at intervals of not more than ten yards and on all other single planes or gangways, twenty yards, and they must not be less than six feet wide and whitewashed or otherwise distinguished from the surrounding walk. The bottom of every shaft must be supplied with a traveling way, to enable men to pass from one side of the shaft to the other without passing under or over the cage. All sumps must be securely planked over, so as to prevent accident.

1706. (§ 3364.) *Penalties.*—Any person neglecting or refusing to perform the duties required by any of the provisions of this chapter is punishable as provided in § 8559 (718) of the Penal Code.

1707. (§ 3365.) *State to furnish appliances.*—The inspector of mines is authorized to provide, at the expense of the state, all necessary air meters, barometers or other instruments for the use of himself and deputy in making all investigations and inspections, as required by this chapter.

1708. *Duty of mine operator to furnish wash houses for employees.*—It shall be the duty of the owner, operator or superintendent of any coal mine in the State of Montana, to provide a suitable building, not an engine or boiler house, which shall not be over eight hundred feet from and convenient to the principal entrance of such mine, for the use of the persons employed therein for the purpose of washing themselves and changing their clothes when entering the mine and returning therefrom. The said building shall be maintained in good order, be properly lighted and heated and supplied with pure cold and warm water, and be provided with facilities for persons to wash, and a suitable locker for each person to be used by him as a repository for his clothes. If any owner or operator of a coal mine shall fail to construct and maintain a wash house as herein provided, he shall be subject to a fine of not less than twenty-five dollars per day for each day of such violation. If any person shall maliciously injure or destroy, or cause to be injured or destroyed, the said building, or

any part thereof, or any of the appliances or fittings used for supplying light, heat or water therein, or doing any act tending to the injury or destruction thereof, he shall be deemed guilty of an offense against this Act, and shall be subject to a fine of not less than Five Dollars nor more than One Hundred Dollars or imprisonment of not less than five days nor more than sixty days, or both such fine and imprisonment. [*Act approved March 7, 1907.*] (10th Sess. Chap. 134.)

1709. *Check weighman.*—The weighman employed at any mine shall subscribe to an oath or affirmation before a justice of the peace, or other officer authorized to administer oaths, to do justice between employer and employee, and to truly and correctly weigh the output of coal from the mines as herein provided. The miners employed by or engaged in working for any mine owner, operator or lessee of any mine in this state shall have the privilege, if they desire of employing at their own expense a check weighman, who shall have like equal rights, powers and privileges in the weighing of coal as the regular weighman, and be subject to the same oath and penalties as the regular weighman. Said oath or affirmation shall be kept conspicuously posted in the weigh office, and any weigher of coal or person so employed, who shall knowingly violate any of the provisions of this article, or any owner, operator or agent of any coal mine in this state who shall forbid or hinder miners employing or using a check weighman as herein provided, or who shall prevent or wilfully obstruct any such check weighman in the discharge of his duty, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars nor more than Five Hundred Dollars for each offense, or by imprisonment in the county jail for a period of not less than thirty days nor more than ninety days, or by both such fine and imprisonment, proceedings to be instituted in any court having competent jurisdiction. Whenever the Inspector of mines, or Deputy Inspector of Mines shall be satisfied that the provisions of this section have been wilfully violated, it shall be his duty to forthwith inform the prosecuting attorney of any such violation, together with all the facts within his knowledge and the prosecuting attorney shall thereupon investigate the charges so preferred, and if he be satisfied that the provisions of this section have been violated, it shall be his duty to prosecute the person or persons guilty thereof. [*Act approved February 19th, 1901.*] (7th Sess. 65-6.)

1710. *False weights. Penalty.*—Any person or persons having or using any scale or scales for the purpose of weighing the output of coal at mines, so arranged or constructed that fraudulent weighing may be done thereby, or who shall knowingly resort to or employ any means whatsoever, by reason of which such coal is not correctly weighed and reported in accordance with the pro-

visions of this Article, shall be deemed guilty of a misdemeanor, and shall, upon conviction, for each such offense, be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for a period not to exceed sixty days, or by both such fine and imprisonment, proceedings to be instituted in any court of competent jurisdiction. [Act approved February 19th, 1901, § 2.] (7th Sess. 66.)

ARTICLE III.

REGULATION OF THE INDUSTRY OF MINING.

Section 1711. Inspector of Mines. Appointment.

- " 1712. *Deputy inspector, qualifications and duties.*
- " 1713. *Duties of mine inspector. Annual inspection.*
- " 1714. *Duty to inspect mine upon complaint.*
- " 1715. *Notice to owner of defects.*
- " 1716. *Annual inspection. Report.*
- " 1717. *Investigation after accidents.*
- " 1718. *Bond.*
- " 1719. *Report.*
- " 1720. *To what mines act is applicable.*
- " 1721. *Penalties.*
- " 1722. *Safety apparatus must be used in mines.*
- " 1723. *Penalties.*
- " 1724. *Code of signals in mines.*
- " 1725. *Penalties.*
- " 1726. *Fines paid into school fund.*

1711. *Inspector of Mines. Appointment.*—The Governor, by and with the advice and consent of the Senate must appoint an Inspector of Mines, who shall be at least thirty years of age, a resident of Montana at least one year, who shall be theoretically and practically acquainted with mines and mining in all its branches, and he shall hold his office for four years unless sooner removed by the Governor. No person shall hold the position of Inspector of Mines while an employee or officer of any mining company or corporation. The Inspector of Mines must devote his entire time to the duties of his office, and his salary is two thousand, four hundred dollars. [Act approved March 4th, 1897, § 1.] (5th Sess. 109.)

1712. *Deputy Inspector, qualifications and duties.*—The Governor by and with the consent of the Senate must appoint a Deputy Inspector of Mines who shall possess like qualifications to those required of the Inspector of Mines, who shall hold his office for four years unless sooner removed by the Governor. No person shall hold the office of Deputy Inspector of Mines while an employee or officer of any mining company or corporation.

The Deputy Inspector of Mines must devote his entire time to the duties of his office under the supervision and direction of the Inspector of Mines, and his annual salary is one thousand six hundred and fifty dollars. [*Act approved March 4th, 1897, § 2.*] (*5th Sess. 109.*)

1713. *Duties of mine inspector. Annual inspection.*—It is the duty of the Inspector of Mines by himself or deputy to visit every mine in the State, once every year and inspect its workings, timbering, ventilation, means of ingress and egress, and the means adopted and in use for the preservation of the lives and safety of the miners employed therein. For this purpose the Inspector and his deputy at all times shall have access to any mine and all parts thereof. All mine owners, lessees, operators or superintendents, must render such assistance as may be necessary to enable the Inspector or his deputy to make the examination. When upon such inspection any mine or portion thereof is found to be in an unsafe condition, the Inspector shall at once serve a notice in writing upon the owner, lessor, lessee, agent, manager or superintendent thereof, setting forth the nature of the defects which render such mine unsafe and the point or place in such mine where such defects exist, and requiring the repairs necessary to remedy such defects to be made within a specified time, and, if in his judgment the circumstances so require, he shall forbid the operation of such mine or portion thereof as has been declared unsafe, save and except for the purpose of making the repairs necessary for the purpose of remedying such defects and making such mine safe for the laborers employed therein. [*Act approved March 6, 1903, § 1.*] (*8th Sess. Chap. 98.*)

1714. *Duty to inspect mine upon complaint.*—Whenever the Inspector of Mines receives a complaint in writing signed by one or more parties setting forth that the mine in which he or they are working is dangerous in any respect, he or the deputy inspector must in person visit and examine such mine. Every complaint must set forth the nature of the danger existing at the mine and the time the cause of such danger was first observed. [*Act approved March 6, 1903, § 2.*] (*8th Sess. Chap. 98.*)

1715. *Notice to owner of defects.*—After such complaint has been received by the Inspector of Mines, he must, as soon as possible, visit such mine; and if from such examination he ascertains that the mine is from any cause in a dangerous condition, he must at once notify the owner, lessor or agent thereof, such notice to be in writing, and to be served by copy on such owner, lessor, lessee, or agent, in the same manner as provided by law for the serving of legal process, and the notice must state fully and in detail in what particular manner such mine is dangerous or insecure, and require all necessary changes to be made without delay, for the purpose of making such mine safe for the laborers

employed therein; and in any criminal or civil procedure at law against the party or parties so notified, on account of loss of life or bodily injury sustained by an employee subsequent to such notice and in consequence of a neglect to obey the inspectors' requirements, a certified copy of the notice served by the Inspector is prima facie evidence of the gross negligence of the party or parties so complained of. If the owner, lessor, lessee, or agent of any such mine shall neglect or refuse to obey or comply with the instructions of the Inspector as contained in such notice, or shall neglect or refuse to cause the repairs necessary to remedy such defect to be made within a reasonable time, or shall refuse to cause work to be stopped when so ordered, such party or parties so refusing may be prosecuted criminally by the Inspector. [*Act approved March 6, 1903, § 3.*] (8th Sess. Chap. 98.)

1716. *Annual inspection. Report.*—It is the duty of the Inspector of Mines, at least once in each year, either in person or by deputy inspector, to visit each mining county in the State and examine as many of the mines in the different counties as practicable, and make such recommendations as in his judgment are necessary to insure the safety of the workmen employed therein; and whenever from his examination, he finds any mine to be in an unsafe condition, he shall at once serve a notice upon the owner, lessor, lessee, or agent fails to comply with such notice, he may prosecute them or any of them as provided in the next preceding section. [*Act approved March 6, 1903, § 4.*] (8th Sess. Chap. 98.)

1717. *Investigation after accidents.*—Whenever a serious or fatal accident occurs in any mine it is the duty of the person in charge thereof to immediately notify the Inspector of Mines or the Deputy Inspector, and upon receiving such notice the Inspector in person or the Deputy Inspector must at once repair to the place of the accident, and investigate fully the cause of such accident, and whenever possible to do so, the Inspector or Deputy Inspector shall be present at the Coroner's inquest held over the remains of the person or persons killed by such accident, and testify as to the cause thereof, and state whether, in his opinion, the accident was due to the negligence or mismanagement of the owner or person in charge. If the Inspector or Deputy Inspector can not be immediately present in case of a fatal or serious accident occurring, it is the duty of the owner or person in charge of the mine to have written statements made by those witnessing the same, and duly sworn to. In case no person was present at the time of the accident, then the verified statement of those first present after the accident must be taken, and such statement must be given to the Inspector or the Deputy Inspector. If after making such investigation the Inspector deems the facts warrant it, he may prosecute criminally the

owner, lessor, lessee, or agent of the mine in which such accident occurred. [*Act approved March 6, 1903, § 5.*] (8th Sess. Chap. 98.)

1718. (§ 587.) *Bond*.—The inspector of mines must execute an official bond in the sum of five thousand dollars, and the deputy inspector must execute an official bond in the sum of twenty-five hundred dollars.

1719. (§ 588.) *Report*.—The inspector of mines must make an annual report to the governor on the first Monday of November, and in the report must state all the accidents that have occurred in the mines of the state which have occasioned serious injury or resulted fatally, together with the nature and cause of such accidents. Such report must also contain statistical and other information which may tend to promote the development of the mineral resources of the state, and must set forth the result of the inspector's labors.

1720. *To what mines act is applicable*.—The provisions of this Article do not apply to Mines in which less than five men are employed. But all owners, lessors, lessees, agents, or managers operating any metalliferous mine in this state in which five or more men are employed, shall report the same to the Inspector of Mines, state the name of the mine, the location of the same, the name of the company, person or persons owning or operating the same, post office address and number of men employed. [*Act approved March 6, 1903, § 6.*] (8th Sess. Chap. 98.)

1721. (§ 590.) *Penalties*.—All violations of the provisions of this article are provided for in the Penal Code § 8563 (722).

1722. (§ 3650.) *Safety apparatus must be used in mines*.—It is unlawful for any person to sink or work through any vertical shaft, where mining cages are used, at a greater depth than two hundred feet, unless the shaft is provided with an iron bonneted safety cage to be used in lowering and hoisting employes, or any other persons. The safety apparatus, whether consisting of eccentrics, springs or other device, must be securely fastened to the cage and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet iron of good quality, at least three-sixteenths of an inch in thickness and must cover the top of the cage in such manner to afford the greatest protection to life and limb, from any debris or anything falling down the shaft.

1723. (§ 3651.) *Penalties*.—The penalty for violating any of the provisions of the preceding section is provided in § 8536 (705) of the Penal Code.

1724. (§ 3652.) *Code of signals in mines*.—It is made the duty of the inspector of mines of Montana, and he is hereby required to prepare a complete code of signals for use in all mines in this state, worked through a shaft of seventy-five feet or

more in depth, and employing ten or more men, and cause the same to be made known to each owner or operator of a mine in Montana by printed circular instructions to the end that a uniform code of mine signals may prevail. The said inspector of mines of Montana, may add to or change such code of signals as circumstances may require, but no change of signals shall go into effect until a time specified by him, not less than sixty days nor more than ninety days from the time such change shall be ordered by him; *Provided*, That the code of signals first prepared by him shall be used in all said shaft mines from and after June 1, 1895. [*Act approved March 7, 1895.*]

1725. (§ 3653.) *Penalties*.—Any owner or operator of a mine who shall refuse or neglect to cause the signals provided for in § 1724 (3652) of this act to be used in his mine to the exclusion of all other signals, shall be deemed guilty of a misdemeanor and upon conviction of such refusal or neglect, shall be fined in a sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not less than thirty days or more than ninety days, in the discretion of the court, for each and every offense. [*Act approved March 7, 1895.*]

1726. (§ 3634.) *Fines paid into school fund*.—All fines which may be collected under the provisions of this act, shall be paid into and form a portion of the public school fund in the county in which conviction takes place. [*Act approved March 7, 1895.*]

ARTICLE IV.

REGULATION FOR THE PROTECTION OF STREET CAR EMPLOYEES.

Section 1727. Enclosure for motormen of street cars.

“ 1728. *Same.*

“ 1729. *Penalties.*

“ 1730. *Duties of county attorney to prosecute violations of this act.*

1727. *Enclosure for motormen of street cars*.—From and after the first day of December, A. D., 1908, it shall be unlawful for any person, partnership or corporation owning or operating a street railway in this state, or any officer or agent thereof, superintending, managing the said line of railway, or of the cars thereof, operating electric, cable or other cars, propelled either by steam, cable or electricity, which require the constant services, care, or attention of any person or persons on any part of such car, to require or permit such services, attention or care, of any of its employees, (or any other person or persons,) between the first day of November and the first day of May, of each year, unless such person or persons, partnership or corporation, its said

officers or superintendents and managing agents, have first provided the said car or cars with a proper and sufficient enclosure constructed of wood, iron or glass, or similar suitable material sufficient to protect such employees from exposure to the inclemencies of the weather, *Provided*, that such enclosures shall be so constructed as not to obscure the vision of the person operating the car; *Provided further* that during a fog or fall of snow sufficient to obscure the view of motormen he may be allowed to remove the glass in his immediate front so that the same shall not prevent the safe operation of the car. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 78.*)

1728. *Same.*—From and after said December first, A. D., 1908, it shall be unlawful for any person or persons, partnership or corporation so owning or operating street railways using steam, electric or cable cars, or any superintendent or managing officer or agent thereof, to cause or to permit to be used upon such line of railway, between the said November first and May first, of each and every year, any car or cars upon which the services of any employee such as specified in Section one of this Act is required, unless such car or cars shall be provided with the enclosure required by said § 1727 (1) of this Act, except that any Street Railway Company may at all times of the year run special cars not so protected, nor more than four consecutive hours in one day. [*Act approved March 4, 1907, § 2.*] (*10th Sess. Chap. 78.*)

1729. *Penalties.*—Any person or persons, partnership or corporation owning, operating or superintending or managing any such line of street railway or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of §§ 1727 (1) or 1728 (2) of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Fifty Dollars or more than One Hundred Dollars. Each and every day that any such person or persons cause or permit any of their employees to operate such cars in violation of the provisions of § 1727 (1) of this Act, or cause such cars to be operated in violation of § 1728 (2) of this Act, shall be deemed a separate offense. [*Act approved March 4, 1907, § 3.*] (*10th Sess. Chap. 78.*)

1730. *Duties of county attorney to prosecute violations of this act.*—It is hereby made the duty of the County Attorney of any County in which any street railway is situated and operated, upon information given to him by any person that any person or persons, partnership or corporation has violated any of the provisions of this act, to promptly prosecute such person or persons, partnership or corporation for such violation. [*Act approved March 4, 1907, § 4.*] (*10th Sess. Chap. 78.*)

ARTICLE V.

HOURS AND REGULATION OF LABOR.

- Section 1731. Hours of labor. Hoisting engineers.*
 “ 1732. *Employer made liable.*
 “ 1733. *Penalty.*
 “ 1734. *Hours of labor. Hoisting engineers.*
 “ 1735. *Penalties.*
 “ 1736. *Hours of labor. Underground mines.*
 “ 1737. *Same. Smeltermen.*
 “ 1738. *Penalty.*
 “ 1739. *Hours of labor for municipalities, mines, mills and smelters.*
 “ 1740. *Penalty.*
 “ 1741. *Railway employees. Hours of labor.*
 “ 1742. *Penalties.*
 “ 1743. *Act not to apply to relief or wreck trains.*
 “ 1744. *Labor. Payment in script prohibited.*
 “ 1745. *Same. Penalty*

1731. *Hours of labor. Hoisting engineers.*—It shall hereafter be unlawful for any engineer or other person to run or operate for more than eight hours in twenty-four hours, any first motion or direct acting hoisting engine, in use in any mine, or to run or operate for more than said length of time any geared or indirect hoisting engine at any mine in which fifteen or more men are employed underground. This Act shall only apply to such plant or plants as are in operation sixteen or more hours in twenty-four hours. [Act approved February 19th, 1897, § 1.] (5th Sess. 67.)

1732. *Employer made liable.*—It shall hereafter be unlawful for any mine owner, lessee, company or corporation, operating or conducting any mine, to hire or employ any engineer or other person to run or operate for more than eight hours in twenty-four hours, any first motion or direct acting hoisting engine in use in any mine. Or to hire or employ any engineer or other person to run or operate any geared or indirect acting hoisting engine, at any mine employing fifteen or more men underground. This Act shall only apply to such plants as are specified in section 1731 (1) of this act *Provided, however,* That the provisions of this Act shall not apply to any engineer or person, who temporarily operates any of the engines mentioned, for more than eight hours in one day, when from sickness or other unforeseen cause the person regularly employed is unable to operate the same. [Act approved February 10th, 1897, § 2.] (5th Sess. 67-8.)

1733. *Penalty.*—Any person, company or corporation, violating the provisions of this Act, shall upon conviction, be punished by a fine of not less than ten nor more than one hundred dollars; and each and every day that any person, company or corporation violates the same shall constitute a separate and distinct violation and shall be punishable as such. [*Act approved February 19th, 1897, § 3.*] (5th Sess. 68.)

1734. *Hours of labor. Hoisting engineers.*—That on and after the first day of May, A. D. 1903, it shall be unlawful for any person or persons, company or corporation, to operate or handle, or to induce, persuade or prevail upon any person or persons to operate or handle for more than eight hours in twenty-four hours of each day, any hoisting engine at or in any mine. This act shall apply only to such plants as are in continuous operation or are operated sixteen or more hours in twenty-four hours of each day, or at or in any mine where said hoisting engine develops fifteen or more horse power, or at or in any mine where in there are fifteen or more men employed underground in twenty-four hours of each day. *Provided, however,* that the provisions of this Act shall not apply to any person or persons operating any hoisting engine more than eight hours in each twenty-four hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes. [*Act approved March 3, 1903, § 1.*] (8th Sess. Chap. 53.)

1735. *Penalties.*—Any person or persons, company or corporation, who shall violate any of the provisions of this Act, shall, upon conviction, be punished by a fine of not less than ten (\$10.00) dollars, nor more than one hundred (\$100.00) dollars; and each and every day that such person or persons, company or corporation may continue to violate any of the provisions of this Act, shall be considered a separate and distinct offense and shall be punishable as such. [*Act approved March 3, 1903, § 2.*] (8th Sess. Chap. 53.)

1736. *Hours of labor. Underground miners.*—The period of employment of working men in all underground mines or workings, shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger. [*Act approved February 2nd, 1901, § 1.*] (7th Sess. 62.)

1737. *Same. Smeltermen.*—The period of employment of working men in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores, and refining of ores or metals, shall be eight (8) hours per day, except in cases of emergency where life or property is in imminent danger. [*Act approved February 2nd, 1901, § 2.*] (7th Sess. 63.)

1738. *Penalty.*—Any person or persons, body corporate, agent, manager or employer who shall violate any of the provisions of Sections 1736 (1) or 1737 (2) of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each offense, be subject to a fine of not less than One Hundred Dollars, or more than Five Hundred Dollars, or by imprisonment in the county jail for a period of not less than One (1) month, or more than six (6) months or by both such fine and imprisonment. [*Act approved February 2nd, 1901, § 3.*] (7th Sess. 63.)

1739. *Hours of labor for municipalities, mines, mills and smelters.*—A period of eight (8) hours shall constitute a day's work on all works or undertakings carried on or aided by any Municipal, County, or State Government, and on all contracts let by them, and in mills and smelters for the treatment of ores, and in underground mines, and in the washing, reducing or treatment of coal. [*Act approved March 6, 1907, § 1.*] (10th Sess. Chap. 108.)

1740. *Penalty.*—Every person, corporation, stock company or association of persons who violate any of the provisions of Section 1739 (1) of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than One Hundred (100) Dollars nor more than Five Hundred (\$500) Dollars, or by imprisonment in the County Jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [*Act approved March 6, 1907, § 2.*] (10th Sess. Chap. 108.)

1741. *Railway employees. Hours of labor.*—On all lines of steam railroads or railways operated in whole or in part, within this State the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this State, shall not at any time exceed sixteen (16) consecutive hours or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators and agents acting as operators, are again ordered or required to go on duty; *provided, however,* that nothing in this Section shall be construed to allow any engineer, fireman, conductor or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor or trainman to tie up any passenger or mail train between terminals. [*Act approved February 5, 1907, § 1.*] (10th Sess. Chap. 5.)

1742. *Penalties.*—Any railroad company or superintendent, train dispatcher, trainmaster, master mechanic or other railroad

or railway official who shall order or require any locomotive engineer, locomotive fireman, conductor, trainman, operator or agent acting as operator, to labor contrary to the provisions of Section 1741 (1) of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred (\$100.00) dollars or more than Five Hundred (\$500.00) dollars, or by imprisonment of not less than thirty days or more than sixty days in the county jail; and all railroad or railway corporations operating lines of railroads or railways in whole or in part in this State, shall be liable in damages for all injuries to any person or persons resulting from violations of the provisions of Section 1741 (1) of this Act. [*Act approved February 5, 1907, § 2.*] (10th Sess. Chap. 5.)

1743. *Act not to apply to relief or wreck trains.*—The provisions of Section 1741 (1) of this Act shall not apply to relief or wreck trains. [*Act approved February 5, 1907, § 3.*] (10th Sess. Chap. 5.)

1744. *Labor—Payment in script prohibited.*—It shall be unlawful for any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, to sell, give, deliver or in any way, directly or indirectly, to any person employed by him, or it in payment of wages due or to become due, any script, token, check, draft, order, credit, or any book of account or other evidence of indebtedness payable to bearer or to his assignees, except as hereinafter provided, but such wages shall be paid only in lawful money of the United States, or by check or draft drawn upon some bank in which such person, firm, company, corporation or trust, or the agent or business manager of such person, firm, company, corporation or trust, has money upon deposit to cash the same, and no assignment of any wages due, or to become due to any employee, shall be made to any person, firm, company, corporation or trust, or the business manager or agent of any such person, firm, company, corporation or trust, or to any one interested, directly or indirectly in any firm, company, corporation, or trust employing said laborer. And any contract to the contrary shall be void; *provided*, however, this shall not prevent ranchmen, farmers, lumber camps, or mining camps from supplying their employees or paying said employees in other than cash or check where there is no bank or other store than that owned by said employers at which said employees may purchase supplies, or cash their bankable checks received for their labor. [*Act approved March 7th 1901, § 1.*] (7th Sess. 147.)

1745. *Same. Penalty.*—Every person, company, corporation or trust, or agent or business manager of such person, firm, company, corporation or trust, who violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction

thereof, shall be subject to a fine of not less than One Hundred (\$100.00) Dollars, or more than Five Hundred (\$500.00) Dollars, or by imprisonment in the county jail of not less than one month, or more than six months, or by both such fine and imprisonment. [Act approved March 7, 1901, § 2.] (7th Sess. 147.)

ARTICLE VI.

PROHIBITIONS AGAINST CHILD LABOR.

Section 1746. Employment of children under sixteen years in certain occupations prohibited.

“ 1747. *Liability of parent.*

“ 1748. *Record of children under the age of sixteen years.*

“ 1749. *Age certificates.*

“ 1750. *Enforcement of act.*

“ 1751. *Penalties.*

“ 1752. *Prohibiting employment of children in mines.*

“ 1753. *Permitting employment guilty of misdemeanor.*

“ 1754. *Penalties.*

1746. *Employment of children under sixteen years in certain occupations prohibited.*—Any person, company, firm, association, or corporation engaged in business in this State, or any agent, officer, foreman or other employee having control or management of employees, or having the power to hire or discharge employees, who shall knowingly employ or permit to be employed any child under the age of sixteen years, to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine, mill, smelter, workshop, factory, steam, electric, hydraulic, or compressed air railroad, or passenger or freight elevator, or where any machinery is operated or for any telegraph, telephone or messenger company, or in any occupation not herein enumerated which is known to be dangerous or unhealthful, or which may be in any way detrimental to the morals of said child, shall be guilty of a misdemeanor and punishable as hereinafter provided. [Act approved March 5, 1907, § 1.] (10th Sess. Chap. 99.)

1747. *Liability of parent.*—Any parent, guardian or other person having the care, custody or control of any child under the age of sixteen years, who shall permit, suffer or allow any such child to work or perform service for any person, company, firm, association or corporation doing business in this State, or who shall permit or allow any such child over whom he has such care, custody or control, to retain such employment as is prohibited in Section 1746 (1) of this Act, whether under contract of employment or not, shall be guilty of a misdemeanor and punish-

able as hereinafter provided. [*Act approved March 5, 1907, § 2.*] (*10th Sess. Chap. 99.*)

1748. *Record of children under the age of sixteen years.*—The Commissioner of the Bureau of Agriculture, Labor and Industry shall compile and preserve in his office from reports made to him by the County Superintendent of Schools, as otherwise provided, a full and complete list of the name, age, date of birth and sex of each child, and the names of the parents or guardians of each child under the age of sixteen years who is now or may hereafter become a resident of this State, and such list shall be the official record of the age of children in this State. [*Act approved March 5, 1907, § 3.*] (*10th Sess. Chap. 99.*)

1749. *Age certificates.*—Upon attaining the age of sixteen years any child may make application to the Commissioner of the Bureau of Agriculture, Labor and Industry for an age certificate, which must be presented to any employer with whom such child may seek employment. The employer, if such employment be given, must countersign the certificate, and return the same to the Commissioner of said Bureau, who shall keep the same on file in his office. Any person, firm, company, association or corporation who employs or permits to be employed in any occupation prohibited in § 1746 (1) of this Act, any child without such certificate showing the child to be at least sixteen years of age, shall be guilty of a misdemeanor and punishable as hereinafter provided, should such child prove to be less than sixteen years of age. [*Act approved March 5, 1907, § 4.*] (*10th Sess. Chap. 99.*)

1750. *Enforcement of act.*—To enforce this act the Commissioner of the Bureau of Agriculture, Labor and Industry, the Bureau of Child and Animal Protection and all county attorneys shall, each upon their own volition, or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations. [*Act approved March 5, 1907, § 5.*] (*10th Sess. Chap. 99.*)

1751. *Penalties.*—Every person, firm, company, association or corporation who violates any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than Twenty-five Dollars nor more than Five Hundred Dollars, or by imprisonment in the county jail for a period of not less than thirty days nor more than six months, or by both such fine and imprisonment. [*Act approved March 5, 1907, § 6.*] (*10th Sess. Chap. 99.*)

1752. *Prohibiting employment of children in mines.*—Any person, corporation, stock company or association of persons, owning or operating any underground mine, or any officer, agent, foreman or boss, having the control or management of employees, or having the power to hire or discharge employees, who shall

employ, or knowingly permit to be employed, any child under the age of sixteen years, for work or service in any such mine, or the underground workings thereof, or permit or allow any such child to render or perform any work or service whatever in such mine, whether under contract of employment or otherwise, shall be guilty of a misdemeanor and punishable as hereinafter provided. [Act approved February 15, 1905, § 1.] (10th Sess. Chap. 16.)

1753. *Parent permitting employment guilty of misdemeanor.* Any parent, guardian or other person having the care, custody, or control of any child under the age of sixteen years, who shall permit, suffer, or allow such child to work in any mine having underground workings, or who shall permit or allow any such child over whom they may have such care, custody, or control to retain employment in any such mine, or who, after having knowledge that any such child has taken employment in any such mine, or is performing work or service therein, whether under contract of employment or not, shall fail forthwith to notify the person or corporation owning or operating such mine, or some officer, foreman or employee thereof having the power to hire or discharge employees, of the age of such child, shall be guilty of a misdemeanor and punishable as hereinafter provided. [Act approved February 15, 1905, § 2.] (10th Sess. Chap. 16.)

1754. *Penalties.*—Any person or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not “less than Twenty-five (\$25) Dollars nor more than (\$500) Five Hundred Dollars, or by imprisonment in the County Jail for a period of not less than thirty days nor more than Six months, or by both such fine and imprisonment.” [Act approved February 15, 1905, § 3.] (9th Sess. Chap. 16.)

ARTICLE VII.

PROTECTION OF DISCHARGED EMPLOYEES, AND THE PREVENTION OF BLACK LISTING.

Section 1755. Protection of discharged employees.

“ 1756. *Blacklisting prohibited.*

“ 1757. *Employee to be furnished reason of discharge.*

1755. (§ 3390.) *Protection of discharged employees.*—If any person, after having discharged an employee from his service prevents, or attempts to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, such person is punishable as provided in § 8467 (656), of the penal code, and is liable in punitive damages to such discharged person, to be recovered by civil action; no person is prohibited from informing, by word or writing, any person to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.

1756. (§ 3391.) *Blacklisting prohibited.*—If any company or corporation in this state authorizes or allows any of its agents to blacklist, or any person does blacklist, any discharged employee, or attempts by word or writing, or any other means whatever, to prevent any discharged employee, or any employee who may have voluntarily left said company's service, from obtaining employment with another person, except as provided for in the next preceding section, such company or corporation or person, is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in civil action; and is also punishable as provided in § 8467 (656) of the Penal Code.

1757. (§ 3392.) *Employee to be furnished reason for discharge.*—It is the duty of any person, after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct and complete statement of the reason of his discharge, and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person, or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this chapter.

CHAPTER III.

REGULATION FOR THE REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES.

ARTICLE I. GENERAL REGULATIONS.

II. STATE BUREAU OF VITAL STATISTICS.

ARTICLE I.

GENERAL REGULATIONS.

- Section 1758. Registry of marriages.*
 “ 1759. *Registry of births.*
 “ 1760. *Registry of deaths.*
 “ 1761. *Registry of births and deaths.*
 “ 1762. *Same.*
 “ 1763. *Duties of county clerk.*

1758. (§ 2870.) *Registry of marriage.*—All persons who perform the marriage ceremony must keep a registry of the time of each marriage so celebrated, the residence, the names in full, the place of birth, the age of each party, and whether either has ever been before married.

1759. (§ 2871.) *Registry of births.*—All physicians and professional midwives must keep a registry of the time of each

birth at which they assist professionally, the sex, race and color of the child, and the names and residence of the parents.

1760. (§ 2872.) *Registry of deaths.*—Physicians who attend deceased persons in their last sickness, clergymen who officiate at a funeral, coroners who hold inquests, sextons and undertakers who bury deceased persons, must each keep a registry of the name, age, residence and time of death of such person.

1761. (§ 2873.) *Registry of births and deaths.*—All persons registering marriages, births or deaths must quarterly file with the county clerk a certified copy of their register. All such certificates must specify, as near as may be ascertained, the name in full, occupation, age, term of residence in the city or county, birth-place, condition, whether single or married, widow or widower, sex, race, color, last place of residence, and cause of death of all decedents.

1762. (§ 2874.) *Same.*—If at any birth no physician or midwife attends, the parents must make the report.

1763. (§ 2875.) *Duties of county clerk.*—The county clerk must keep separate registers, to be known as the “Register of Marriages,” the “Register of Births,” and the “Register of Deaths,” in which the marriages, births and deaths certified to him must be numbered in the order in which they are reported to him. There must be stated in each register, in separate columns, properly headed, the various facts contained in the certificates, and the name and official or clerical position of the person making the report. The county clerk must carefully examine each report, and register the same marriage, birth or death but once, although it may be reported by different persons.

ARTICLE II.

STATE BUREAU OF VITAL STATISTICS.

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| <i>Section</i> | <i>1764.</i> | <i>Creation of board.</i> |
| “ | <i>1765.</i> | <i>State registrar to make rules and regulations.</i> |
| “ | <i>1766.</i> | <i>Local registrars.</i> |
| “ | <i>1767.</i> | <i>Registration of births.</i> |
| “ | <i>1768.</i> | <i>Registration of deaths. Burial permits.</i> |
| “ | <i>1769.</i> | <i>Forms of registry certificates.</i> |
| “ | <i>1770.</i> | <i>Certificate of death. Burial permit.</i> |
| “ | <i>1771.</i> | <i>Same.</i> |
| “ | <i>1772.</i> | <i>Certificate of birth.</i> |
| “ | <i>1773.</i> | <i>Duty of sexton or persons in charge of cemetery.</i> |
| “ | <i>1774.</i> | <i>Duties of state registrar.</i> |
| “ | <i>1775.</i> | <i>Duties of local registrar.</i> |
| “ | <i>1776.</i> | <i>Fees for filing certificate of birth.</i> |
| “ | <i>1777.</i> | <i>Registration of physicians. Midwife and undertaker.</i> |
| “ | <i>1778.</i> | <i>Hospital records.</i> |

Section 1779. Compensation of local registrar.

“ 1780. *Peualties.*

“ 1781. *Registrars charged with duty of enforcing this Act.*

1764. *Creation of Board.*—That for the complete and proper registration of births and deaths for legal, sanitary and statistical purposes, there shall be, and hereby is, established and created a State Bureau of Vital Statistics to be under the immediate superintendence of the secretary of the state board of health of Montana who shall be the State Registrar. [Act approved February 20, 1907, § 1.] (10th Sess. Chap. 25.)

1765. *State registrar to make rules and regulations.*—The state registrar is hereby empowered to make, promulgate, and enforce such rules and regulations as he may consider necessary with the approval of the majority of the members of the state board of health, to carry out the provisions of this Act. [Act approved February 20, 1907, § 2.] (10th Sess. Chap. 25.)

1766. *Local registrars.*—The health officer of each city or town shall be the local registrar in and for the city or town of which he is health officer, and he shall perform all the duties of local registrar as hereinafter provided. And when it may appear necessary for the convenience of the people of any locality, the state registrar is hereby authorized, with the approval of the state board of health, to appoint one or more suitable and proper persons to act as sub-registrars, who shall be authorized to receive certificates, and to issue burial and removal permits in and for such portions of the county or district as may be designated in their appointments, and they shall be subject to the same requirements and obligations as the local registrars, and shall make returns directly to the state registrar as hereinafter provided. [Act approved February 20, 1907, § 3.] (10th Sess. Chap. 25.)

1767. *Registration of births.*—That all births shall be registered in the district in which they occur as hereinafter provided. [Act approved February 20, 1907, § 4.] (10th Sess. Chap. 25.)

1768. *Registration of deaths. Burial permits.*—That the body of any person whose death occurs in the state shall not be interred, or otherwise disposed of, or removed from or into any registration district until a permit for a burial or removal shall have been properly issued by the registrar of the district in which the death occurs. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate of death has been filed with him, as hereinafter provided. Stillborn children or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and death shall be filed in the usual manner. [Act approved February 20, 1907, § 5.] (10th Sess. Chap. 25.)

1769. *Forms of registry certificates.*—That the forms of certificates used in registering births and deaths under this Act shall be the standard form recommended by the Bureau of the Census and the American Public Health Association. [Act approved February 20, 1907, § 6.] (10th Sess. Chap. 25.)

1770. *Certificate of death. Burial permit.*—That the undertaker or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the registrar, and securing a burial permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them, and present the certificate to the attending physician for the medical certificate of the cause of death, and he shall then present the completed certificate to the registrar to secure the burial or removal permit. The undertaker shall deliver duplicate burial permit to the sexton, or person in charge of the place of burial, before interring the body. The medical certificate shall be made and signed by the attending physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which the death occurred. And the cause of death, and all other facts required, shall in all cases be stated in accordance with the rules and regulations of the state registrar. [Act approved February 20, 1907, § 7.] (10th Sess. Chap. 25.)

1771. *Same.*—In case of any death occurring without medical attendance, it shall be the duty of the undertaker to notify the registrar of such death, and when so notified, the registrar shall inform the local health officer or coroner and refer the case to him for immediate investigation and certification prior to issuing a burial permit. [Act approved February 20, 1907, § 8.] (10th Sess. Chap. 25.)

1772. *Certificate of birth.*—The certificate of birth shall be made and filed by the attending physician or midwife within ten days after the date of birth. And if there is no attending physician or mid-wife, then it shall be the duty of the father of the child, householder or owner of the premises, or the head of the hospital or institution in which the birth occurred, to make and file the certificate within ten days after birth. [Act approved February 20, 1907, § 9.] (10th Sess. Chap. 25.)

1773. *Duty of sexton or person in charge of cemetery.*—No sexton or person in charge of any cemetery in which interments are made shall inter or permit the interment of any body unless it is accompanied by a burial permit as herein provided. And he shall indorse upon one of the permits the date of interment, over his signature, and return all permits so indorsed to the local registrar of his district within ten days from the date of interment. He shall also keep a record of all interments made

in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker, which record shall at all times be open to public inspection. [*Act approved February 20, 1907, § 10.*] (*10th Sess. Chap. 25.*)

1774. *Duties of state registrar.*—The state registrar shall prepare, print, and supply to all registrars all blanks and forms used in registration, recording and preserving the returns or in otherwise carrying out the purposes of this act, and shall prepare and issue such rules and regulations as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. He shall arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered. He shall inform all registrars what diseases are to be considered as infectious, contagious or communicable, and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases. And he shall annually certify to the treasurer of the several counties the number of births and deaths registered, and the names of the local registrars, with the amounts due each at the rate fixed herein. [*Act approved February 20, 1907, § 11.*] (*10th Sess. Chap. 25.*)

1775. *Duties of local registrars.*—It shall be the duty of the local registrar or sub-registrar to supply blank forms of certificates to such persons as require them. And he shall carefully examine each certificate of birth or death when presented for record to see that it has been made out in accordance with the provisions of this act and the instructions of the state registrar and if any certificate of death is incomplete or unsatisfactory it shall be his duty to call the attention to the defect in the return and withhold issuing the burial permit until they are corrected. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; *provided*, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious or communicable and dangerous to public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under the conditions prescribed by the state and local boards of health. If a certificate of birth is incomplete he shall immediately notify the informant and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of births and deaths in two separate series, beginning with "number one" for the first birth and the first death in the calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall

also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identical with the original certificate, to be filed and properly preserved in his office as the local record of such birth and death, in such manner as directed by the state registrar and he shall, on the fifth day of each month, transmit to the state registrar, all the original certificates registered by him during the preceding month. And if no births or no deaths occur in any month, he shall, on the fifth day of the following month, report that fact to the state registrar in such manner as the state registrar shall direct. [*Act approved February 20, 1907, § 12.*] (*10th Sess. Chap. 25.*)

1776. *Fees for filing certificate of birth.*—Each physician, midwife, father of child, householder or owner of premises manager or superintendent of public or private institution, or other person acting as informant and filing with the local registrar within ten days after the birth of a child a proper certificate correctly and legibly made out and containing all the items required by the provisions of this act and the rules and regulations of the state registrar shall be entitled to receive the sum of fifteen (15) cents, to be paid by the treasurer of the county upon certification by the state registrar. Only one certificate shall be received of the birth of the same child, and the order of right to file the certificate shall be the same as the order of responsibility for filing as herein given. Certificates in which certain items are missing shall not be regarded as complete and shall not be entitled to payment until the missing items have been supplied. And the state registrar shall annually certify to the treasurers of the several counties the number of births registered, with the name of the person registering them and the amounts due each at the rate fixed therein. [*Act approved February 20, 1907, § 13.*] (*10th Sess. Chap. 25.*)

1777. *Registration of physicians, midwife and undertaker.*—That every physician, midwife, and undertaker shall without delay register his or her name, address, and occupation with the local registrar of the district in which he or she resides, or may hereafter acquire residence, and shall thereupon be furnished by the registrar with a copy of this act, and such rules and regulations as may be prepared by the state registrar, relative to its enforcement. [*Act approved February 20, 1907, § 14.*] (*10th Sess. Chap. 25.*)

1778. *Hospital record.*—All superintendents or managers, or other persons in charge of hospitals or lying-in institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all personal and statistical particulars relative to the inmates in their institutions at the date of the approval of this act, that are required in the form of certificate

herein provided for, as directed by the state registrar. And thereafter such records shall be made by them, for all future inmates, at the time of admission. [*Act approved February 20, 1907, § 15.*] (*10th Sess. Chap. 25.*)

1779. *Compensation of local registrar.*—That each local registrar or sub-registrar shall be entitled to be paid the sum of twenty-five (25) cents for each birth and each death certificate completely and properly made out and filed with him, to be paid by the treasurer of the county upon certification by the state registrar. He shall supply blank forms of certificate to such persons as require them, and shall carefully examine the certificates presented for record and require them to be properly made out. And he shall keep such records and make such returns to the state bureau as may be required by the rules and regulations of the state registrar. [*Act approved February 20, 1907, § 16.*] (*10th Sess. Chap. 25.*)

1780. *Penalties.*—That if any attending physician shall refuse or neglect to make the medical certificate of death herein required of him, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than five days nor more than twenty-five days, or by both such fine and imprisonment in the discretion of the court. And if any physician shall wilfully and knowingly make a false certificate of the cause of death in any case, he shall be guilty of a misdemeanor, and, upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment in the county jail for not less than twenty-five days nor more than one hundred days, or by both such fine and imprisonment in the discretion of the court. And any physician or midwife, or any other person with responsibility for reporting births, in the order named in § 1772 (9) of this act, who shall refuse or neglect to make out and file the certificate of birth herein required, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars for each offense. And any sexton, undertaker, or other person who shall inter, remove or otherwise dispose of the body of any deceased person, without the permit herein provided for, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars. And any registrar or sub-registrar who shall neglect or fail to enforce the provisions of this act in his district, or shall refuse or neglect to perform any of the duties imposed upon him by this act or the rules and regulations of the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dol-

lars. And any person or corporation who shall violate any of the provisions of this act, or any of the rules or regulations formulated thereunder by the state registrar, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. [*Act approved February 20, 1907, § 17,*] (10th Sess. Chap. 25.)

1781. *Registrars charged with duty of enforcing this act.*—Local registrars and sub-registrars are hereby charged with the strict and thorough enforcement of the provisions of this act in their districts under the supervision of the state registrar. And they shall make an immediate report to the state registrar of any violation of this law coming to their notice by observation or upon complaint of any person or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and with supervisory power over local registrars, to the end that all requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all registrars shall aid him upon request, in such investigations. When he shall deem it necessary he shall report cases of violation of any of the provisions of this act to the prosecuting attorney of the proper county, with the statement of the facts and circumstances, and when any such case is reported to them by the state registrar all prosecuting attorneys or officials acting in such capacity shall forthwith institute and promptly follow up the necessary court proceedings against the parties responsible for the alleged violation of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of this act. [*Act approved February 20, 1907, § 18,*] (10th Sess. Chap. 25.)

CHAPTER IV.

REGULATIONS FOR THE PROTECTION OF THE LIVE STOCK INDUSTRY.

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| ARTICLE | I. | BOARD OF STOCK COMMISSIONERS. |
| | II. | RECORD OF MARKS AND BRANDS. |
| | III. | STOCK INSPECTORS. |
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STATE OR COUNTY. |
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INDUSTRY. |
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ARTICLE I.

BOARD OF STOCK COMMISSIONERS.

Section 1782. Appointment.

- “ 1783. *Qualifications and term of office of commissioners.*
- “ 1784. *Districts.*
- “ 1785. *Organization of.*
- “ 1786. *Expenses allowed.*
- “ 1787. *Duties of.*
- “ 1788. *Auditing bills for expenses.*
- “ 1789. *Report.*

1782. *Appointment.*—The Governor is authorized to nominate, and by and with the consent of the Senate, appoint a Board of Stock Commissioners of one member from each County in the State, and such Stock Commissioners upon entering upon their duties must take the constitutional oath of office, which oath must be filed in the office of the Secretary of State. [*Act approved February 23rd, 1897.*] (5th Sess. 177.)

1783. (§ 2951.) *Qualifications and term of office of commissioners.*—Each member of said board so appointed must be the owner of cattle or horses in the county for which he is appointed, and shall be a resident of said county. The stock commissioners shall hold office for two years or until their successors are appointed and qualified, and in case of vacancy from death, resignation or removal the governor must appoint to fill such vacancy.

1784. (§ 2952.) *Districts.*—The board may divide the state into as many districts as necessary.

1785. (§ 2953.) *Organization of.*—The board must organize by electing one of their number president, and appoint a secretary.

1786. (§ 2954.) *Expenses allowed.*—The stock commissioners and their secretary receive no compensation or mileage for their services, but must be allowed their actual expenses incurred by them in the performance of their duties.

1787. (§ 2955.) *Duties of.*—It is the duty of the board to exercise a general supervision over, and so far as may be, protect the stock interests of the state from theft and disease, and devise and recommend from time to time, such legislation as in their judgment will foster this industry. The board may take all necessary and lawful steps, procure all necessary and lawful process for the attendance of witnesses, and employ counsel to assist in the prosecution of any person as hereinbefore provided, and it is the duty of the board, when necessary, to assist in the prosecution of any person guilty of any offense against the laws of this state in feloniously branding or stealing any stock, or

any other crime, or misdemeanor, under any of the laws of the state for the protection of the rights and interests of stock owners, and it is the duty of the board to make rules and regulations governing the recording and use of live stock brands.

1788. *Auditing bills for expenses.*—It is the duty of the Board to audit all bills for expenses incurred under the provisions of this Chapter, and if found correct, to certify the same, and the warrant drawn by the State Auditor, on the State Treasurer in favor of the party or parties entitled thereto for the amounts so certified, shall be drawn on the stock inspector and detective fund, *provided* that said Board shall itself audit and directly pay from the donations to it made all extra expense bills incurred under the power conferred by Section Three of this Act.* [Act approved March 3rd, 1903.] (8th Sess. Chap. 50.)

* Note.—Repealed Acts 1907, Chap. 172.

1789. *Report.*—The Board must make an annual report in writing to the Governor on the 31st day of December and must state therein all the transactions of the Board for the year. The said Board shall also present therein a list, as nearly complete as may be, of all stray cattle and horses sold, either within this State or in outside markets, whose proceeds have not been theretofore claimed by the owners, describing each animal by kind, sex, marks, brands, weight and net sum realized on sale of each and the name and address of the Stock Association or person to whom each amount was remitted, if known. And said Board shall also procure, and for the period of four successive issues next after May 1st of each year, publish in a newspaper in Helena and a newspaper in Billings, Montana, said data for the year preceding May 1st, the expense of such publication to be borne pro rata by the proceeds of the animals listed therein. And it shall forthwith, after each yearly publishings, file a copy thereof in the office of the County Recorder of each County in the State. [Act approved March 3, 1903, § 2.] (8th Sess. Chap. 50.)

ARTICLE II.

RECORD OF MARKS AND BRANDS.

Section 1790. *Recorder of marks and brands.*

“ 1791. *Recording brands. Fees.*

“ 1792. *Publication of brands.*

“ 1793. *Venting brands.*

“ 1794. *Butcher must exhibit hides.*

“ 1795. *Butcher must keep record.*

1790. (§ 2940.) *Recorder of marks and brands.*—The secretary of the board of stock commissioners is the general recorder of marks and brands.

1791. *Recording brands. Fees.*—Whenever any person wishes to record a brand or mark, application may be made to the Gen-

eral Recorder of marks and brands directly, who must designate the particular brand, or mark and brand, to be used by the applicant, defining the position on the animal upon which the brand shall be placed. The General recorder of marks and brands must keep a record, in a book kept by him for that purpose, of all brands and marks that may be recorded by him, with the name and residence of the person recording the same, which said report book shall be open to the inspection of the public; and he must also furnish to the owners of recorded brands a certified copy of the record of the same, which certificate is *prima facie* evidence of the ownership of the mark or brand so recorded. The General Recorder of Brands and Marks may charge and receive from each person recording a brand, or mark and brand a fee of two dollars for each brand or mark and brand, so recorded. [*Act approved March 11th, 1901.*] (*7th Sess. 127.*)

1792. (§ 2942.) *Publication of brands.*—The general recorder of marks and brands shall annually have published as an appendix to the report of the board of stock commissioners to the governor, a list of all brands or marks and brands which have not been previously published, and cause the same to be printed and illustrated at his own expense, a sufficient number of copies in pamphlet form for free distribution to those engaged in stock raising.

1793. (§ 2943.) *Venting brands.*—Every person who sells horses, mules or cattle, must vent or counter brand such animals and said vent or counter brand must be upon the same side of the animal as the original brand and must be a fac simile of the original brand, except that it may be reduced one half in size, and the venting of said original brand shall be *prima facie* evidence of sale or transfer of said animal or animals so vented.

1794. (§ 2944.) *Butcher must exhibit hides.*—All persons slaughtering cattle must keep the hides, with the ears attached, for ten days, and persons having such hides in their possession must exhibit the same for examination, upon demand being made by any person. Any person who shall fail to observe the provisions of this section shall be punished as provided in § 8861 (1186) of the Penal Code.

1795. (§ 2945.) *Butcher must keep record.*—All persons who are butchers and who slaughter cattle, must keep a record of the marks and brands of the cattle slaughtered by them, in a book, subject at all times to the inspection of the public, in which must be recorded the name of the person from whom the cattle are purchased, together with his residence and date of purchase and delivery, and on or before the first day of each month must make two copies of such record and make affidavit to the correctness of the same, one of which to be filed in the office of the nearest justice of the peace and the other in the office of

the county clerk, and any person who shall fail to observe the provisions of this section shall be punished as provided in § 8861 (1186) of the Penal Code.

ARTICLE III.

STOCK INSPECTOR.

- Section 1796. Appointment and powers.*
“ 1797. *Bond and oath.*
“ 1798. *Duties of.*
“ 1799. *Compensation.*
“ 1800. *District officers, detectives and inspectors.*
“ 1801. *Brands fraudulently changed.*
“ 1802. *Compensation for animals killed.*
“ 1803. *Costs on appeal.*

1796. (§ 2970.) *Appointment and powers.*—The board of stock commissioners may appoint such stock inspectors and detectives as are necessary for the protection of the live stock interests of the state, and the inspectors and detectives have the same power as sheriffs to summon a posse when necessary and to make arrests. The stock inspectors and detectives may, when deputed by the sheriff, exercise the powers of deputy sheriff, but must not receive any fee or emolument therefor from the state or any county.

1797. (§ 2971.) *Bond and oath.*—The stock inspectors and detectives must each make and execute a bond with two sufficient securities, in the sum of one thousand dollars, to the state, conditioned for the full and faithful performance of their duties, said bond to be approved by and filed with the secretary of state, and each must take and subscribe the constitutional oath of office.

1798. (§ 2972.) *Duties of.*—It is the duty of the stock inspectors and detectives to arrest all persons who in their presence violate the stock laws of the state, and every stock inspector and detective, upon information that any person has committed any offense against the laws of the state in feloniously branding or stealing any stock, or any offense against the laws of the state, for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of such person, and, upon warrant issued therefor, immediately arrest such person, and bring him before the proper officer and notify the board of his acts.

1799. (§ 2973.) *Compensation.*—The stock inspectors and detectives are under the exclusive control and direction of the board, and must be paid for their services such sums as may be agreed upon by the board, out of the fund hereinafter provided for, but in no case must they receive any mileage.

1800. (§ 2991.) *District officers, detectives and inspectors.*—The stock inspectors and detectives are district officers, and the board must designate the district in which the inspectors and detectives shall serve, and the district must be designated in their commissions.

1801. (§ 2974.) *Brands fraudulently changed.*—Whenever a mark or brand upon any neat cattle, horse, or other animals, has been fraudulently altered, obliterated or defaced, so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill said animal to ascertain the mark or brand so altered or defaced, upon paying to the owner the value of said animal. [Act approved March 2, 1895.]

1802. (§ 2975.) *Compensation for animals killed.*—The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the stock inspector and detective fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund. [Act approved March 2, 1895.]

1803. (§ 2976.) *Costs on appeal.*—Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against said officer seizing said animal, and should he fail to recover damages in any greater amount than that allowed under § 1802 (2975), he shall bear all costs that may be incurred in the maintenance of said action. [Act approved March 2, 1895.]

ARTICLE IV.

INSPECTION OF HORSES TO BE REMOVED FROM STATE OR COUNTY.

Section 1804. *Inspection of horses before removal from state.*

“ 1805. *Duty of stock inspector.*

“ 1806. *Penalties.*

“ 1807. *Fees.*

“ 1808. *Inspection of horses before removal from one county to another.*

“ 1809. *Duties of stock inspector.*

“ 1810. *Certificate of inspection.*

“ 1811. *Penalties for violation of act.*

1804. *Inspection of horses before removal from state.*—From and after the passage of this Act, it shall be the duty of any and all persons removing or taking from this state in any manner whatsoever, any horse, mule, mare, colt, foal or filly, immediately

before the shipment or removal of the same, and at the place from which the shipment is to be made, to cause the same to be inspected by a stock inspector, or the sheriff of the county, from which such stock is to be removed, as hereinafter provided. [*Act approved March 11th, 1901, § 1.*] (7th Sess. 93.)

1805. *Duty of stock inspector.*—On receiving notice from any person that he desires to remove or take from this state to be sold or used outside of this state any of the class of animals mentioned in Section 1804 (1), it shall be the duty of any stock inspector, or the sheriff of the county from which such animals are to be taken, to inspect the same, by carefully noting the brands upon such animals, and otherwise describing such of said animals as may have no brands, and to keep a record of all such inspections in a book to be provided for that purpose by the county commissioners of each county. Such descriptions shall contain:

1. The brands of all animals branded, and a description of animals not branded.
2. The number of animals inspected for removal.
3. The name of the owner or person removing the same.
4. The date of such inspection, with destination to which such animals are to be taken. If in the opinion of the officer making the inspection the person proposing to remove such stock is rightfully in the possession of the same he shall grant such person a certificate of inspection in duplicate, containing the matters herein provided, with the further statement that permission is granted to such person to remove such animals from this state. The person so receiving said certificates must deposit with the agent of the railroad company at the point from which the shipment is made the duplicate certificate referred to, which said duplicate must be filed by the agent, and must be all times during business hours accessible to the public. The agent must at the time of the receipt of the duplicate indorse upon the original certificate the date of the receipt of the duplicate. If, however, the officers making such inspection, shall be of the opinion that such stock, or any portion thereof, is stolen, or otherwise wrongfully in the possession of the person proposing to remove the same, he shall withhold such certificate and permit to remove, until satisfactory assurance is given him of the rightful possession of such property by the person proposing to remove the same. Such certificate of inspection shall be by the holder thereof exhibited to any person demanding to see the same. [*Act approved March 11th, 1901, § 2.*] (7th Sess. 94.)

1806. *Penalties.*—Any railroad company or agent shipping or permitting to be shipped from any station, siding or stock yards, without first receiving the duplicate certificate herein provided for, and indorsing on the original the date of its receipt, any of the animals mentioned in Section 1804 (1) of this Act, and any

person removing or attempting to remove any of said animals without first securing a certificate of inspection, or any person in any other way violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction in any court of competent jurisdiction, shall be fined in any sum not less than fifty dollars nor more than three hundred dollars and costs, and in default of payment of such fine and costs, shall be imprisoned in the county jail until such fine and costs are discharged, at the rate now provided by law. The fine herein provided for if collected shall be paid into the county treasury to the credit of the general fund of the county where said conviction is had. [*Act approved March 11th, 1901, § 3.*] (7th Sess. 95.)

1807. *Fees.*—For the service of inspection herein provided for the officer making such inspection shall receive three dollars per day while engaged in making such inspection, and shall receive in addition thereto his necessary actual expenses, to be paid by the person for whom the inspection is made. [*Act approved March 11th, 1901, § 4.*] (7th Sess. 95.)

1808. *Inspection of horses before removal from one county to another.*—That, from and after the passage of this Act, it shall be the duty of any and all persons, associations or corporations, removing or taking horses, mules or asses from one county to another county in this state, or beyond the boundaries of this state, by railroad, or in any other manner whatsoever, for the purpose of selling such stock, or of offering the same for sale at any public sale, to cause the same to be inspected by a State stock inspector or by the sheriff of the county from which the stock is to be removed, as hereinafter provided, and no railroad company shall accept such horses, mules or asses for shipment unless the shipper shall produce a certificate of their inspection, as herein required; *provided, however*, that the provisions of this Act shall not apply to stock removed or taken from one county to another for the purpose of pasturing, feeding or changing of range therefor, nor to stock so removed or taken for the use by any person, association or corporation in the usual and ordinary conduct of their business. [*Act approved March 6, 1907, § 1.*] (10th Sess. Chap. 125.)

1809. *Duties of stock inspector.*—On receiving notice from any person, association or corporation that he desires to remove, ship or take from one county in this state to another county in this state, or beyond the state boundaries, any of the class of animals named in Section 1808 (1), it shall be the duty of the stock inspector or sheriff of such county, from which such animals are to be taken, to immediately inspect the same by carefully noting the brands upon such animals and otherwise describing such animals, and to keep a full and complete record of all such inspections in

a book to be provided for that purpose by the State Board of Stock Commissioners. Such description shall contain:

I. The brands of all animals branded, and the description of animals not branded.

II. The number of animals inspected for removal.

III. The name of the owner or person removing the same.

IV. The name of the person, corporation or association, from which the person removing the same made purchase of such animals.

V. The date of such inspection, with destination to which such animals are to be taken, and the means of their transportation.

VI. That none of such animals are suffering with any infectious or contagious disease.

If, in the opinion of the officer making the inspection, the person proposing to remove such stock is rightfully in possession of the same and that such animals are not infected with disease, he shall grant such person or persons, corporation or association, a certificate of inspection containing a statement of the matters hereinabove required, with a further statement that permission is granted to such person to remove such animals, either from the county or from the State, as the case may be. If, however, the officer or officers making such inspection shall be of opinion that such stock, or any portion thereof, is stolen or otherwise wrongfully in the possession of the person or persons proposing to remove the same, or are infected with disease, the inspection certificate and permit to remove shall be withheld until satisfactory evidence is given to the inspector of the rightful possession of such property by the person or persons proposing to remove the same, and, in case of disease, until the State Veterinarian shall have made examination of the animals withheld on account of disease, and made written order and direction respecting their disposition. Such certificate of inspection and permit to remove shall be, by the holder thereof, exhibited to any person or persons demanding to see the same. [*Act approved March 6, 1907, § 2.*] (*10th Sess. Chap. 125.*)

1810. *Certificate of inspection.*—It shall be the duty of the stock inspector or sheriff, immediately upon making the inspection herein required, in case he passes such livestock, to issue the certificate herein provided for, and to immediately transmit a duplicate for such certificate to the State Board of Stock Commissioners, to be by said board held and kept as a permanent record, and, in case he refuses to grant such inspection certificate because of question as to the ownership of the property, he shall immediately notify the State Board of Stock Commissioners of his refusal to grant such certificate and his reasons therefor; and, should he refuse to grant a certificate because of his belief that such livestock are infected with disease, the state veterinary sur-

geon shall be at once notified and requested to make inspection and examination. [*Act approved March 6, 1907, § 3.*] (*10th Sess. Chap. 125.*)

1811. *Penalties for violation of act.*—Any person removing or attempting to remove any livestock of the kind named in Section 1808 (1) of this Act, without first having received the certificate of inspection and removal, herein provided for, and any railroad accepting for shipment any such property, without compelling the shipper to first give satisfactory evidence of his having received an inspection and removal certificate as herein provided, and any person refusing to exhibit such certificate upon proper demand, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than fifty nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or shall be punished by both such fine and imprisonment. All fines assessed and collected under the provisions of this Act shall be turned into the state treasury, and placed to the credit of the stock detective and inspection fund. [*Act approved March 6, 1907, § 4.*] (*10th Sess. Chap. 125.*)

ARTICLE V.

INSPECTION OF CATTLE FOR SHIPMENT.

Section 1812. Inspection of cattle to be removed from state.

“ 1813. *Duties of stock inspector.*

“ 1814. *Penalties for violation of act.*

1812. *Inspection of cattle to be removed from state.*—It shall be the duty of any and all persons removing or taking from this State in any manner whatsoever, any cow, ox, bull, stag, heifer, steer, or calf, immediately before the shipment of same, or its removal, and at the time and place from which said shipment is to be made, to cause the same to be inspected by a stock inspector of the State as hereinafter provided; *Provided, however,* that whenever any of the class of stock aforementioned shall be loaded for shipment and consigned to any point where the State Board of Stock Commissioners maintain a stock inspector, then and in such event only, such shipments so consigned, need not be inspected in this State before shipment. [*Act approved February 7, 1907, § 1.*] (*10th Sess. Chap. 8.*)

1813. *Duties of stock inspector.*—On receiving notice from any person that he desires to remove from this state to be sold or used outside of the State, any of the class of animals mentioned in Section 1812 (1) of this Act, it shall be the duty of any stock inspector to whom such is given, to inspect said animals, carefully noting all of the brands and marks upon same, and make a report of such inspection to the Secretary of the Board of Stock

Commissioners, which said report shall show the date of such inspection, the name and address of the person taking said animals from the State, the destination of the shipment, the marks and brands upon each animal together with the number of animals listed under each brand; and if in the opinion of the stock inspector the person proposing to remove the same, is rightfully in possession of the animals inspected, he shall grant such persons a certificate of inspection, containing the matter herein provided, with the further statement that permission is granted said person to remove such animals from the State. The person receiving said certificate must deposit it with the railroad agent at the point from which said shipment was made, which certificate must be filed by the agent and must be at all times during business hours accessible to the public, and the agent must at the time of filing said certificate endorse upon it the date of its receipt and filing by him. If however, any stock inspector making such inspection shall be in doubt as to whether any of said stock is rightfully in possession of the person proposing to remove same from this State, he shall withhold such inspection certificate until satisfied that the said shipper is in rightful possession of such stock. [*Act approved February 7, 1907, § 2.*] (10th Sess. Chap. 8.)

1814. *Penalties for violation of act.*—Any railroad company or agent, shipping or permitting to be shipped from any station, siding or stock yards within this State, any of the class of animals described in Section 1812 (1) of this Act, without first receiving the aforesaid inspection certificate and endorsing upon it, the date of its receipt and filing, and any person removing or attempting to remove from this State any of the said animals without first securing the certificate of inspection herein provided, and any person who shall load any of such stock for shipping and consign same to any point where the State Board of Stock Commissioners maintain a stock inspector, and who shall then reconsign them enroute to any other points, so as to avoid inspection at point of shipment and also the official inspection at the cities heretofore mentioned where such inspection is maintained, shall be deemed guilty of a misdemeanor and on conviction in any court of competent jurisdiction, shall be fined in any sum not less than Fifty (\$50.00) Dollars nor more than Three Hundred (\$300.00) Dollars, or imprisoned in the County Jail not to exceed six (6) months, such fine if collected to be turned into the general fund of the county where such conviction is had. [*Act approved February 7, 1907, § 3.*] (10th Sess. Chap. 8.)

ARTICLE VI.

INSPECTION OF PUBLIC MARKETS FOR LIVE STOCK.

- Section 1815. Public markets for live stock must keep records.*
 “ 1816. *Inspection of public markets.*
 “ 1817. *Quarantine of diseased animals.*
 “ 1818. *State treasurer to hold proceeds of sales of
 stray stock.*
 “ 1819. *Penalties.*

1815. *Public markets for live stock must keep records.*—That, hereafter, any person, firm, corporation or association of individuals desiring to establish, maintain or conduct a market for the sale of horses or other livestock at public auction, or otherwise, shall keep a full and complete record book in which must be recorded the name or names of any person, corporation or association of individuals bringing to the said market, or offering for sale at such market, any horses or other livestock, together with a description thereof as to their kind and the brand thereof. And if requested by the sheriff of the county or a stock inspector, in case question arises respecting ownership, particular description shall be recorded showing, in addition to the brand, the color and sex of such animals; and, in addition, such record shall clearly show the name of the person for whom such animal or animals were sold, the date of the sale, and the person to whom such animal or animals were sold, and the particular character of the animal or animals. Such record book must be open for inspection by the public for persons interested at any and all reasonable times. [Act approved March 5, 1907, § 1.] (10th Sess. Chap. 96.)

1816. *Inspection of public markets.*—The stock inspector of the county or district, or the sheriff of any county in this state and the State Veterinarian, or any person duly appointed and representing the State Board of Stock Commissioners may enter upon the premises where any such livestock are being held, or sold, and be accorded every facility, by the owners thereof, in determining whether any violations of the law are being made, or are likely to be made, by any person, association or corporation whatsoever. *Provided, however,* that such inspection shall not unnecessarily interfere with the conduct of the sales; and that no horses, or other livestock, so sold at such market shall be delivered to the purchaser until he shall first have received an inspection certificate issued by one of the officers hereinabove designated for the inspection of such livestock, showing clearly and explicitly that the person making such inspection, as herein authorized, is satisfied as to the ownership of such livestock and the health of all animals so sold. [Act approved March 5, 1907, § 2.] (10th Sess. Chap. 96.)

1817. *Quarantine of diseased animals.*—Should the person herein authorized to inspect such livestock at any such sale find any of the animals afflicted with an infectious or contagious disease, he shall immediately take possession of such animals and place them in quarantine to be thereafter disposed of as may be directed by the State Veterinary Surgeon. And, in the event there is any question arising respecting the ownership of any animal sold, the person so making the inspection as herein authorized shall have the right, privilege, power and authority to take possession of such animal or animals; *provided*, that he shall notify the person in charge of such market and conducting the sales and also the person who may purchase any such livestock at any such sale, within a reasonable time. *Provided, further*, that, where any livestock is sold, the ownership of which is not known or determinable by the person or persons herein authorized to make inspection, they may be sold as strays, and that the net proceeds derived from said sale shall be transmitted to the State Board of Stock Commissioners of the State of Montana, at Helena, Montana, to be held and kept, together with a complete description of any such animal or animals and the brands thereon, and such money shall be held and retained by the State Board of Stock Commissioners for the use and benefit of the owner or owners of any such animal or animals, and paid over to such owner or owners when the ownership shall have been satisfactorily determined. And, in the event that the proceeds of the sale of any such animal or animals so transmitted to the State Board of Stock Commissioners be not claimed by the lawful owner of the property so sold, within two years from the date of the receipt of the proceeds of such sale, such money shall be held and disposed of as hereinafter provided; *provided*, that nothing herein contained shall be so construed as to repeal or avoid the application of Chapter L, Laws of 1903, amendatory of Sections 1788 (2956), 1789 (2957) and 2990 of the Political Code of the State of Montana. [Act approved March 5, 1907, § 3.] (10th Sess. Chap. 96.)

1818. *State Treasurer to hold proceeds of sales of stray stock.*—When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the State Board of Stock Commissioners, the state treasurer shall be required to hold such money in a separate fund to be known and designated as the "Stray Stock Fund," and his books shall show all information with respect to the sale and proceeds from each animal in accordance with the published yearly report of the State Board of Stock Commissioners, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property, and be

placed to the credit of the State Stock Inspection and Detective Fund. [Act approved March 5, 1907, § 4.] (10th Sess. Chap. 96.)

1819. *Penalties.*—Any person or persons, corporation or association guilty of a violation of any of the provisions of this Act shall be deemed guilty of a misdemeanor, and is punishable by a fine not exceeding six hundred (\$600.00) dollars, or by six months' imprisonment in the county jail, or by both such fine and imprisonment. [Act approved March 5, 1907, § 5.] (10th Sess. Chap. 96.)

ARTICLE VII.

SHIPMENT OF ESTRAY CATTLE.

Section 1820. *Shipment of stray cattle, duties of shipper.*

“ 1821. *Description of animals taken out during shipment.*

“ 1822. *Powers and duties of inspectors outside of state.*

“ 1823. *State board of stock commissioners to furnish blanks.*

“ 1824. *Failure of shipper or inspector to comply with this act. Penalty.*

“ 1825. *Transfer of unclaimed estray fund.*

“ 1826. *Same.*

“ 1827. *Duties of secretary of board of stock commissioners.*

1820. *Shipment of stray cattle; duties of shipper.*—That every person, agent, firm, corporation, pool or round-up association who shall ship cattle from this state may ship with their own cattle any strays which may be among them, but they shall, before shipment or at the time of loading same on the cars for shipment, carefully and as accurately as possible, inspect or tally the brand on such cattle, whether their own or strays, making a list in duplicate, which list shall state the date of loading, name of shipper, description of brands on each animal, number and class of each brand, destination, name of commission firm to whom consigned, and the name of person in charge of shipment; one copy of this list to be filed with the railroad agent at point of loading, who shall, in turn, forward the same to the Board of Stock Commissioners, at Helena, within two days after shipment, and another copy to be immediately mailed to the State Stock Inspector at point of destination. [Act approved March 5, 1907, § 1.] (10th Sess. Chap. 94.)

1821. *Description of animals taken out during shipment.*—That every person in charge of, or who accompanies such shipment as the shipper in charge, shall take an accurate description,

including the brands of each and every animal whether dead or alive taken out of shipment in transit between original loading point and final destination, and shall hand such description to the State Stock Inspector at such point of destination immediately upon arrival of the shipment in the stock yards. [*Act approved March 5, 1897, § 2.*] (*10th Sess. Chap. 94.*)

1822. *Powers and duties of inspectors outside of state.*—The Stock Inspector appointed to inspect Montana cattle at any cattle market outside of this state shall be duly commissioned by the State Board of Stock Commissioners, and shall be qualified and have power and authority to inspect any or all cattle that may come from this state to the market where he may be located, having the same power as other stock inspectors within the state to inspect and seize any stock which he may have reason to believe is stolen, or upon which brands have been altered or obliterated, and shall have authority to take the proceeds of any animal in dispute or bearing altered or burned brands, remitting such proceeds to the State Board of Stock Commissioners, who shall hold same pending a decision as to ownership, and such stock inspector shall, upon receipt of the certified lists mentioned in Sections 1820 (1) and 1821 (2) of this Act, make inspection of the cattle so listed, and, if upon comparison of such list with his own inspection, he shall find any difference or discrepancy, he shall make a second inspection of any animal or animals or upon which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct, and he shall forthwith make inspection report to the State Board of Stock Commissioners, stating in detail wherein any discrepancies with the loading tally exist, and calling special attention to his own inspection of such animal or animals and he shall, on his own report, make mention of any and every animal with the brands thereon which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination; all such reports to be entered in a suitably bound book and be, at all times, open to public inspection. [*Act approved March 5, 1907, § 3.*] (*10th Sess. Chap. 94.*)

1823. *State board of stock commissioners to furnish blanks.*—The State Board of Stock Commissioners shall have printed the necessary blanks for the tallying of cattle at loading point as provided in Section 1820 (1) of this Act, and shall furnish same free to shippers on application. The expense of such printing to be paid out of the Stock inspector and indemnity fund. [*Act approved March 5, 1907, § 4.*] (*10th Sess. Chap. 94.*)

1824. *Failure of shipper or inspector to comply with this act. Penalty.*—Any person, agent, firm, corporation, pool, or round-up association who shall ship cattle from this state, and shall fail to

make such inspection or tally at point of loading, or who shall fail to file a true and correct tally, to the best of their knowledge and belief, of all the brands of cattle in such shipment with the railroad agent at the point of shipment, or who shall fail to forward a true and correct copy, duly signed by them as parties making the shipment, to the Stock Inspector at point of destination, or any person who shall accompany a shipment of cattle as the shipper in charge from this state, and shall fail to take a description of any and every animal taken out in transit and hand such description to the stock inspector at point of destination, or any stock inspector at market points who shall fail to make inspection as provided in Section 1822 (3) of this Act, shall be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than fifty (\$50.00) dollars, nor more than five hundred (\$500.00) dollars, for each and every offense. The fines so collected to be turned in the general fund of the county where conviction is had, and any stock inspector, sheriff, or other police officer, shall have power to make arrests to enforce the provisions of this Act. [*Act approved March 5, 1907, § 5.*] (*10th Sess. Chap. 94.*)

1825. *Transfer of unclaimed estray fund.*—That all unclaimed money which is now in the hands of the State Board of Stock Commissioners or the State Stock Association, or in the possession of any other person or persons or the Secretary or Treasurer of either said Board or association, received from the sale of estray cattle or horses shall be fully accounted for and paid over to the State Treasurer of the State of Montana, and placed to the credit of the Stock Inspection and Detective Fund, within thirty days after the passage and approval of this Act. The State Examiner is hereby directed to investigate the books of account of either said board, association, or its officers, respecting said estray fund, for the purpose of determining whether said moneys have in the past been properly accounted for and used, and after such examination he shall make full and complete report with reference thereto to the Governor. [*Act approved March 11, 1907, § 1.*] (*10th Sess. Chap. 194.*)

1826. *Same.*—All money hereafter derived from the sale of estrays shall be fully accounted for by the Secretary of the State Board of Stock Commissioners, and paid and turned into the State Treasury of the State of Montana, as herein provided. [*Act approved March 11, 1907, § 2.*] (*10th Sess. Chap. 194.*)

1827. *Duties of secretary of board of stock commissioners.*—The proceeds of all stray cattle or horses sold, either within or without the state, shall be transmitted to the Secretary of the State Board of Stock Commissioners, who shall keep a record of the brands and other marks of identification of the animal, together with a statement of the net proceeds derived from the sale,

and such proceeds shall be paid and turned over by said Secretary to the owner of the recorded brand on the animal, without delay. Where the brand is not recorded or is blotched or dim the proceeds derived from the sale shall likewise be paid to the owner in the event that he shall first present to the State Board of Stock Commissioners satisfactory evidence of his ownership of the animal or animals sold. A full description of the estrays for which the proceeds derived from their sale remains in the hands of the Secretary of the State Board of Stock Commissioners unclaimed, shall be published for the period of four consecutive issues after May 1st of each year in four newspapers, one of which shall be published in the City of Helena and the others in the Cities of Billings, Miles City and Fort Benton, Montana; and when such publication shall have been made, and the proceeds from the sale of such animals shall have remained in the hands of the said Secretary of the State Board of Stock Commissioners for a period of two years, it shall be paid over to the State Treasurer of the State of Montana, and be by him placed to the credit of the Stock Inspection and Detective Fund. All interest on such moneys and upon moneys collected as fees for recording marks and brands shall be by the Secretary of the State Board of Stock Commissioners duly accounted for and paid over to the State Treasurer of the State of Montana, as herein provided to be done with the principal funds in his hands. [Act approved March 11, 1907, § 3.] (10th Sess. Chap. 194.)

ARTICLE VIII.

EXTERMINATION OF SCABIES.

- Section 1828. Scabies in horses. Duty of board.*
 “ 1829. *Infected districts.*
 “ 1830. *Treatment of stock in district.*
 “ 1831. *Powers of state veterinarian.*
 “ 1832. *Stock inspectors; deputy state veterinarian.*
 “ 1833. *Dipping to be under control of state veterinarian.*
 “ 1834. *Expense a lien on stock treated.*
 “ 1835. *Penalties.*

1828. *Scabies in horses. Duty of board.*—In addition to the powers now conferred upon it by law the Board of Stock Commissioners of this State shall have the power and it shall be its duty to determine the existence of and employ the most efficient and practical means to prevent, suppress, control and eradicate the disease known as scabies, among horses, mules, asses and cattle; and to direct and regulate the handling, dipping or treating

of any of the aforesaid classes of live stock when infected with or exposed to the said disease; to make and adopt such quarantine and sanitary regulations to that end as may be by it deemed expedient, *provided*, that all such regulations shall so far as practicable conform to the regulations in that regard of the Department of Agriculture of the United States as they shall be from time to time promulgated; and to create and define districts within which such disease exists; *provided further* that in determining the district or districts within this State in which such disease from time to time exists, said board shall co-operate with the said Department of Agriculture. A majority of said Board shall constitute a quorum, and the said Board may exercise any of the powers conferred upon it by this Act through committees of its own members thereto specially empowered by resolution. [Act approved February 6, 1905, § 1.] (9th Sess. Chap. 7.)

1829. *Infected districts.*—Whenever the said Board shall from time to time have determined that said disease exists in any such district or districts, and created and defined the same, the same shall be known as an infected district or districts, and the Board shall as soon as possible after creating such infected district, cause notice of the creation and of the limits thereof to be given by publication once a week for three successive weeks in some newspaper published within and of general circulation within said district, and if no newspaper be published therein, then in some newspaper published at a point nearest thereto; and thereupon it shall be the duty of all persons owning or having the control of any of the aforesaid classes of live stock within the boundaries of said district, to dip or treat said live stock within said Board applicable to said district may require, the dipping of said Board applicable to said district may require the dipping of all such live stock to be in strict compliance with the regulations of said Board, and within such reasonable time after the completion of the publication of the notice of the creation of said district as said Board may prescribe. The said Board shall, before publishing said notice, as to any created district, prescribe the dipping regulations applicable thereto; and shall publish said regulations with said notice. [Act approved February 6, 1905, § 2.] (9th Sess. Chap. 7.)

1830. *Treatment of stock in district.*—It shall be the duty of said Board of Stock Commissioners promptly upon the expiration of thirty (30) days after the completion of the publication of notice of the creation of any such infected district, to cause to be seized and gathered and dipped and treated any undipped or untreated live stock of the classes named within said district; *provided, however*, that no obligation shall exist or be created by or against the said Board on account of the dipping or treating of any live stock by it, but such expenses shall be a

charge against and shall be paid by said Board out of any sums realized out of the lien of liability by this Act created. [*Act approved February 6, 1905, § 3.*] (9th Sess. Chap. 7.)

1831. *Powers of state veterinarian.*—The State Veterinarian and Stock Inspectors shall be subject to the supervision and control of the said Board in the exercise of the powers conferred upon it by this Act, and they shall accomplish all orders to them by said Board directed and perform all duties that may be imposed upon them by the regulations of said Board, and to that end whenever necessary, they may enter upon and examine any car, yard, stable, corral, steamboat or any building or premises to examine any said live stock therein or thereon, and otherwise do whatever may be found necessary and proper therein or thereon to the effectual discharge of their said powers and duties. [*Act approved February 6, 1905, § 4.*] (9th Sess. Chap. 7.)

1832. *Stock inspectors; deputy state veterinarians.*—The Stock Inspectors shall be deemed for the purpose of accomplishing the provisions of this Act, Deputy State Veterinarians, and subject to the approval of the Department of Agriculture of the United States. The Inspectors appointed by it may also be appointed Deputy State Veterinarian by the said Board for the purpose of this Act, and they shall hold said appointment at the pleasure of said Board so long as they remain inspectors of said Department and as such are stationed in this state, and they shall act as such Deputies without bond or compensation from the State and shall possess all the powers and duties of Deputy State Veterinarians as needed for the purpose of this Act. [*Act approved February 6, 1905, § 5.*] (8th Sess. Chap. 7.)

1833. *Dipping to be under control of state veterinarian.*—All dipping shall be under the supervision of the State Veterinarian, and every person within the district who shall own or control any of said live stock required to be dipped or treated therein, shall as soon as the same shall have been dipped or treated in conformity with the regulations of said Board, be entitled to receive and shall receive from the State Veterinarian a certificate in writing to that effect. The said Board is hereby empowered and required by regulation to impose and collect a dipping inspection fee to cover the estimated cost of dipping or treating supervision incurred under its regulations. [*Act approved February 6, 1905, § 6.*] (9th Sess. Chap. 7.)

1834. *Expense a lien on stock treated.*—For all sums paid out by the said Board, pursuant to the provisions of this Section, and in addition thereto such further sum per head of live stock dipped or treated as in this Act provided, as may be fixed by the said Board by regulation as a penalty, and for all amounts due on account of dipping or treating supervision it shall have a lien upon all such live stock so dipped or treated and any other live

stock of the person owning the same, which lien shall be a first lien and superior to any other lien, claim or demand against said live stock, which said lien the said Board shall have power to enforce by appropriate action and it may further maintain an action to recover from the owner of such live stock the amount of said lien. The Board shall cause to be kept in the office of the Secretary thereof a record of all sums due to it on account of payments made or expenditures incurred on account of the dipping of any such live stock, or on account of dipping or treating supervision, together with the brand of all live stock affected by the lien aforesaid and the name of the owner thereof. A certified copy of such record shall be filed in the office of the County Clerk where such owner resides, or where such live stock are, if the owner does not reside in the State of Montana, which shall be deemed to impart notice of such lien. No such lien shall be effective until such certified copy is so filed. [*Act approved February 6, 1905, § 7.*] (9th Sess. Chap. 7.)

1835. *Penalties.*—Any owner or person having control of any of said live stock or any other person whether an officer or employee of said Board or a private person who shall wilfully violate any provisions of this Act or regulations or orders lawfully made in conformity therewith, or who shall in any manner hinder or obstruct the execution of any such regulation or order, or hinder, resist or obstruct any officer or employee of said Board or the State Veterinarian or any of his Deputies or any Stock Inspector in the discharge of his duty or in the exercise of his lawful powers or who shall wilfully or negligently break any quarantine, or wilfully or negligently suffer any quarantined animal or animals to escape from quarantine, shall be deemed guilty of a misdemeanor. [*Act approved February 6, 1905, § 8.*] (9th Sess. Chap. 7.)

ARTICLE IX.

STATE VETERINARY SURGEON.

Section 1836. Appointment and qualifications of state veterinary surgeon.

" 1837. *Duties of state veterinary surgeon.*

" 1838. *Owners must notify veterinary surgeon.*

" 1839. *Exceptions.*

" 1840. *Quarantine, when ordered.*

" 1841. *To order diseased animals slaughtered.*

" 1842. *Appraisers as to value.*

" 1843. *Report of veterinary surgeon.*

" 1844. *Importation, when prohibited.*

" 1845. *Persons to report contagious diseases to veterinary surgeon.*

Section 1846. Diseased animals not to be sold or slaughtered for food.

“ 1847. *Payment for diseased animals killed.*

“ 1848. *Payment of indemnity.*

“ 1849. *Salary and expenses of state veterinary surgeon.*

“ 1850. *Fees of appraisers and others.*

“ 1851. *Liability for animals destroyed.*

“ 1852. *Place of quarantine.*

“ 1853. *Deputy veterinary surgeon.*

1836. *Appointment and qualifications of state veterinary surgeon.*—The Governor is authorized to nominate, and, by and with the consent of the Senate, appoint a competent Veterinary Surgeon, who shall be known as the “State Veterinary Surgeon,” and who shall hold his office for a term of four years, and until his successor shall be appointed and qualified, unless he be sooner removed for cause, and who must, before entering upon the performance of his duties, execute a bond in the sum of five thousand dollars, and take and subscribe the oath of office prescribed by the constitution. The person so appointed must be a graduate in good standing of some recognized, regular and reputable Veterinary College, or Veterinary Department of a regular and reputable university; must be legally qualified to practice in the State of Montana, and must have had at least five years’ continuous practical experience in his profession, and his selection must be based upon competency and efficiency alone. [*Act approved March 7, 1907, § 1.*] (10th Sess. Chap. 160.)

1837. *Duties of state veterinary surgeon.*—The duties of the State Veterinary Surgeon are:

1. To investigate all cases of infectious or contagious diseases among cattle, horses, mules, asses, sheep, goats, swine and all other domestic animals in this State, of which he may have a knowledge, or which may be brought to his notice, and in the absence of specific information, to make visits of inspection to any locality, where he may have reason to suspect that there is any infectious or contagious disease.

2. To inspect, under the regulations of this Article, all such animals which may be brought into this State, in any manner whatever, from or through such state or territory or foreign country, as the Governor may declare by proclamation, must be held in quarantine, for the purpose of inspection.

3. To inspect, under the regulations of this Article, all such animals in this State, or that may be brought into this State, in any manner whatever, from any other State, territory or foreign country.

4. To quarantine any premises, in which animals affected with any infectious or contagious disease are, or have been kept, and to

quarantine such animals, which are affected with, or have been exposed to any infectious or contagious disease, and to define the limits within which they must be kept, the time they shall be detained, and the conditions on which they shall be released therefrom.

5. For the purpose of making such inspection, or performing any of his duties, he has authority to enter any enclosure, corral, car, shed, barn, stable or other building, in which animals are, or have been kept. [*Act approved February 27, 1905.*] (9th Sess Chap. 38.)

1838. (§ 3002.) *Owners must notify veterinary surgeon.*—After the making of such proclamation the owner, or person in charge, of any animals, arriving in this state from or through any state, territory, or foreign country, against which quarantine has been declared, must notify the state veterinary surgeon without delay, and must not allow such animals to leave the place of arrival until they have been examined by the veterinary surgeon, and his certificate obtained that all such animals are free from disease; and no animals pronounced unsound from disease by the veterinary surgeon, must be turned loose, or allowed to run at large, or removed or permitted to escape, but must be held subject to the order of the veterinary surgeon. Any person failing to comply with the provisions of this section is punishable as provided in Section 8447 (1174) of the Penal Code, and is liable for any damage and loss that may be sustained by any person by reason of the failure of such owner to comply with the provisions of this section.

1839. (§ 3003.) *Exceptions.*—The owner of such animals, ridden under the saddle or driven in harness into this state, or under yoke, and any person coming into this state with his own team or teams, is not required to notify the veterinary surgeon, or await the inspection of the animals, but he is liable for all loss or damage to any person by reason of any contagious or infectious disease brought into the state by his animals; and no such animals must be held in quarantine for a longer period than ninety days, unless contagious or infectious disease is found to exist among them.

1840. (§ 3004.) *Quarantine, when ordered.*—In all cases of contagious or infectious disease among domestic animals or Texas cattle in this state, the veterinary surgeon has authority to order the quarantine of the infected premises, and in case such disease becomes epidemic in any locality in this state, the veterinary surgeon must immediately notify the governor, who must thereupon issue his proclamation forbidding any animal of the kind among which said epidemic exists to be transferred from said locality without a certificate from the veterinary surgeon showing such animal to be healthy. The expenses of holding, feeding and taking

care of all animals quarantined under the provisions of this article, must be paid by the owner, agent or person in charge of such animals.

1841. (§ 3005.) *To order diseased animals slaughtered.*—In case of any epidemic disease where premises have been previously quarantined by the veterinary surgeon, as before provided, he is further authorized and empowered, when in his judgment necessary, to order the slaughter of any and all such diseased animals upon said premises, and all such animals as have been exposed to contagion or infection, under the following restrictions: The order must be a written one, and must be made in duplicate, and there must be a separate order and duplicate for each owner of the animals condemned, the original of each order to be filed by the veterinary surgeon with the secretary of state, and the duplicate given to the owner. Before slaughtering any animal that has been exposed only, and does not show disease, the veterinary surgeon must call in consultation with him two practicing veterinary surgeons or physicians, residents of the state, or if this is impossible, then two stock owners, residents of the state, and he must have written indorsements upon his order of at least one of the consulting persons, stating that such action is necessary, before the animal is slaughtered.

1842. (§ 3006.) *Appraisers as to value.*—Whenever, as in this article provided, the veterinary surgeon orders the slaughter of one or more animals, he must at the time of making such order notify in writing the nearest available justice of the peace, who must thereupon summon three disinterested citizens, who are stock owners in the neighborhood, to act as appraisers of the value of the animal. The appraisers before entering upon the discharge of their duties, must be sworn to make a true and faithful appraisal without prejudice or favor. They must, after making their appraisal, return certified copies of their valuation, a separate one being made for each owner, together with an accurate description of each animal slaughtered (giving all brands, ear-marks, wattles, age, sex, and class, as to whether American, half-breed or Texan), to the justice of the peace by whom they were summoned, who must, after entering the same upon his record and making an indorsement upon each, showing it to have been properly recorded, return it together with a duplicate order of the veterinary surgeon, to the person owning the animal slaughtered; and it is the duty of the veterinary surgeon to superintend the slaughter of such animals as may be condemned, and also the destruction of the carcass, which latter must be by burning to ashes, or burying in the earth to a depth of not less than six feet, and which must include every part of the animal and hide, and also excrement as far as possible. If the owner of any animal found diseased by the veterinary surgeon is killed,

or consents to its being killed by the veterinary surgeon without appraisement, then the veterinary surgeon must burn or bury it as herein provided.

1843. (§ 3007.) *Report of veterinary surgeon.*—The veterinary surgeon must make an annual report on or before the first day of October to the state board of stock commissioners of all matters connected with his work, and the board must make the same a part of their annual report to the governor, and they must also transmit to the several boards of county commissioners such parts of the report as they consider necessary and of general interest to the breeders of live stock. The board must also give information in writing as soon as it is obtained to the governor and to the various boards of county commissioners, of each case or supposed case of disease in each locality, the cause, if known, and the measures adopted to check it.

1844. (§ 3008.) *Importation, when prohibited.*—Whenever the governor has good reason to believe that any disease mentioned in this article has become epidemic in certain localities in another state or territory, or that conditions exist that render domestic animals and Texas cattle likely to convey disease, he must by proclamation, designate such localities, and prohibit the importation therefrom of any live stock of the kind diseased into this state, except under such restrictions as he, after consultation with the veterinary surgeon, may deem proper. Any person who, after the publication of such proclamation, knowingly receives in charge any animal from any of the prohibited districts, and transports or conveys the same within the limits of this state, is punishable as provided in § 8448 (1175) of the Penal Code, and is further liable for any and all damages and loss that may be sustained by any person by reason of the importation or transportation of such prohibited animals.

1845. (§ 3009.) *Persons to report contagious diseases to veterinary surgeon.*—It is the duty of any person who has upon his premises, or upon the public domain, any case of contagious or infectious disease among such animals, to immediately report the same to the veterinary surgeon, and a failure so to do, or any attempt to conceal the existence of such disease, or to wilfully or maliciously obstruct or resist the veterinary surgeon in the discharge of his duty, is punishable as prescribed in § 8449 (1176) of the Penal Code, and forfeits all claims to indemnity for loss from the state.

1846. (§ 3010.) *Diseased animals not to be sold or slaughtered for food.*—The following regulations must be observed in all cases of disease mentioned in this article:

1. It is unlawful to sell, give away, or in any manner part with, any animal affected with, or suspected of being affected with, contagious or infectious disease; and in case of any animal

that may be known to have been affected with or exposed to any such disease, within one year prior to such disposal, due notice of the fact must be given in writing to the party receiving the animal.

2. It is unlawful to kill for the purpose of selling the meat, any such animal, or to sell, give away or use any part of it, or its milk, or to remove any part of the skin. A failure to observe these provisions is punishable as provided in § 8449 (1176) of the Penal Code. It is the duty of the owner or the person having in charge any such animal affected with, or suspected of being affected with, any contagious or infectious disease, to immediately confine the same in a safe place, isolated from other animals, and with all necessary restrictions to prevent dissemination of the disease, until the arrival of the veterinary surgeon. These regulations apply as well to animals in transit through the state as to those resident therein; and the veterinary surgeon or his duly authorized agent, has authority to examine, in car, yard, pastures or stables, or upon the public domain, all such animals, and on detection of disease, to take possession of, and treat and dispose of the animals in the same manner as provided by this article.

1847. (§ 3011.) *Payment for diseased animals killed.*—All claims arising from the slaughter of animals, under the provisions of this article, together with the order of the veterinary surgeon, and the valuation of the appraisers in each case, must be submitted to the state auditor, and for each claim that he finds to be equitable and entitled to indemnity under this article, must issue to the person entitled thereto, his warrant on the stock indemnity fund in the state treasury for the sum named in the appraisers' report. In auditing any claim under this article, the auditor must satisfy himself that it does not come under any class for which indemnity is prohibited by this article, and he must require the affidavit of the claimant to this fact, or if the claimant be not cognizant thereof, then of some reputable person who is cognizant thereof; and also the certificate of the veterinary surgeon, whose duty it is to inform himself fully of the fact, that in his opinion the claim is legal and just, and the auditor may, in his discretion, require further proof.

1848. (§ 3012.) *Payment of indemnity.*—The indemnity granted is the value of the animal as determined by the appraisers with reference to its diminished value because of being diseased or having been exposed to disease. The indemnity must be paid to the owner upon his application and the presentation of the proofs prescribed herein, and such application must be made within six months after the slaughter of the animal, or the claim is barred. The right to indemnity under this article is limited to animals destroyed by reason of the existence of some epizootic disease generally fatal and incurable, such as rinderpest, hoof and mouth

disease, pleuro-pneumonia, anthrax or Texas fever, among bovines, and glanders among horses, mules and asses. For the ordinary contagious diseases, not in their nature fatal, such as epizootic and influenza in horses, no indemnity must be paid. The right to indemnity does not exist, and the payment of such must not be made in the following cases:

1. For animals belonging to the United States.
2. For animals that are brought into the state contrary to the provisions of this article.
3. For animals that are found to be diseased, or that are destroyed because they have been exposed to disease before or at the time of their arrival in the state.
4. When an animal was previously affected by any other disease, which, from its nature and development, was incurable and necessarily fatal.
5. When an owner or person in charge has knowingly or negligently omitted to comply with the provisions of § § 1845 (3009) and 1846 (3010) of this article.
6. When an owner or claimant, at the time of coming into possession of the animal, knew it to be diseased or received the notice specified in the first clause of § 1846 (3010), of this article.
7. When the animal has been brought into the state within ninety days immediately preceding the outbreak of disease, on account of which such animal was killed. [*Act approved March 7, 1895.*]

1849. *Salary and expenses of state veterinary surgeon.*—The State Veterinary Surgeon shall receive an annual salary of three thousand dollars, together with his actual and necessary traveling and office expenses, and must devote his entire service to the duties of his office, and he must be authorized to appoint a stenographer at a salary not exceeding twelve hundred dollars per annum. [*Act approved March 7, 1907, § 2.*] (10th Sess. Chap. 160.)

1850. (§ 3014.) *Fees of appraisers and others.*—The appraisers mentioned in this article receive three dollars for each day or part of a day they are actually employed, which must be paid from the state treasury out of the stock indemnity fund in this article provided, upon vouchers which bear the certificate of the justice who summoned them. The justice receives his ordinary fee for issuing a summons, to be paid out of the stock indemnity fund. The persons called in consultation by the veterinary surgeon each receive three dollars for each day or part of a day they are actually employed and ten cents per mile, for distances actually traveled, which sums must be paid from the state treasury out of the stock indemnity fund upon vouchers certified to by the veterinary surgeon. The incidental expenses in causing animals to be slaughtered and their carcasses to be burned and disinfect-

ing infected premises, must be paid from the state treasury out of the stock indemnity fund, upon vouchers.

1851. (§ 3015.) *Liability for animals destroyed.*—The liability for indemnity for animals destroyed and for fees, costs and expenses incurred under the provisions of this article in any year is limited by, and must in no case exceed, the amount especially designated for the purpose and for that period, by the terms of this article; nor must the veterinary surgeon or any one else incur any liability under the provisions of this article in excess of the surplus in the stock indemnity fund hereinafter provided; nor must any act be performed or property taken under the provisions of this article become a charge against the state.

1852. (§ 3017.) *Place of quarantine.*—The veterinary surgeon must select the place where stock must be quarantined.

1853. *Deputy veterinary surgeon.*—The Veterinary Surgeon has power to appoint from time to time one deputy at any time he cannot personally attend to all the duties required by his office at a salary not to exceed five dollars per day for each day actually employed, together with his actual and necessary traveling expenses, to be paid out of the stock indemnity fund. [*Act approved March 16th, 1901.*] (7th Sess. 129.)

ARTICLE X.

REGULATIONS FOR THE PROTECTION OF THE SHEEP INDUSTRY.

Section 1854. Board of sheep commissioners. Constitution and appointment of board.

- " 1855. *Qualification of members. Term of office.*
- " 1856. *Organisation of board of sheep commissioners.*
- " 1857. *Inspection districts. Duties of board.*
- " 1858. *Expenses.*
- " 1859. *Annual report.*
- " 1860. *Appointment of inspectors.*
- " 1861. *Qualifications and oath of inspectors.*
- " 1862. *Enforcement of quarantine.*
- " 1863. *Duties of inspectors.*
- " 1864. *Quarantine of infected sheep.*
- " 1865. *Quarantine of infected premises and diseased animals.*
- " 1866. *Governor may prohibit importation of sheep from infected districts.*
- " 1867. *Duty of importers of sheep to notify state veterinary surgeon.*
- " 1868. *Inspection of sheep in transit.*
- " 1869. *Payment of expenses for inspecting and caring for diseased animals.*
- " 1870. *Duty of railroad company to notify state veterinary surgeon.*

Section 1871. Duty of state veterinary surgeon to inspect.

“ 1872. *Dipping of sheep temporarily in state.*

“ 1873. *Fees of inspectors.*

“ 1874. *Authority of state veterinarian.*

“ 1875. *Statement of expenses.*

“ 1876. *Inspection record.*

“ 1877. *Penalties for violation of the act.*

“ 1878. *Reports of inspectors.*

“ 1879. *Employment of specialist.*

“ 1880. *Certificate to run public buck herd.*

“ 1881. *Rams and he-goats not to run at large.*

“ 1882. *Penalty.*

“ 1883. *Liability to civil damages.*

1854. *Board of sheep commissioners. Constitution and appointment of board.*—The Governor of the State of Montana is hereby directed and empowered to appoint a Board of Sheep Commissioners, consisting of one member of each of the counties of the State, which appointment shall be made with the consent of the Senate, when in session. The members of said Board, before entering upon their duties, shall take the oath of office prescribed by the Constitution, which oath of office must be filed in the office of the Secretary of State. [Act approved February 28, 1905, § 1.] (9th Sess. Chap. 45.)

1855. *Qualification of members. Term of office.*—Each member of said Board shall be an actual resident of the County for which he is chosen, and an owner of sheep within the State, or directly interested therein, and must, during his term of office, reside within such county. The members of said Board shall hold office for a term of two years, and until their successors are appointed and qualified, and in case of vacancy in said Board from death, resignation or otherwise, the Governor shall fill such vacancy by appointment. [Act approved February 28, 1905, § 2.] (9th Sess. Chap. 45.)

1856. *Organization of board of sheep commissioners.*—The board must organize by electing one of its members or some sheep owner of the State as president, and one of its members as vice-president, and appointing a competent person as secretary, which secretary shall receive such compensation as may be allowed by said board. The members of the board shall receive actual expenses incurred by him in the performance of their duties, but shall receive no other compensation for their services, except as inspectors or deputy inspectors, or protecting the sheep industry as may be prescribed by the rules of the board. Five members shall constitute a quorum for the transaction of business. It shall be the duty of the vice-president to act as president in the absence of the president from the state, or from a meeting. [Act approved March 8, 1907, § 2.] (10th Sess. Chap. 173.)

1857. *Inspection districts. Duties of board.*—The Board may divide the State into suitable Districts for inspection purposes, and provide for and appoint Inspectors and Deputy Inspectors, when necessary. It shall be the duty of the Board to exercise a general supervision over the sheep industry of the State, and to do all acts that, in their judgment, will foster and develop said industry, and protect the same from theft and disease, and shall devise and recommend, from time to time, such legislation as, in their judgment, will foster and develop said industry. The Board may employ all proper and lawful means to procure the attendance of witnesses before it, and may employ attorneys to advise the Board and to assist in the prosecution of any person or persons guilty of any offense against any of the laws and interests of sheep owners, and the protection and fostering of the sheep industry. The Board shall have power to make rules and regulations for its own government, and for the guidance and direction of Sheep Commissioners of each county and the Inspectors, and may convene whenever necessary, provided that there shall be at least one meeting of said Board each year. The duties of the Secretary shall be such as may be prescribed by the Board. [*Act approved February 28, 1905, § 4.*] (9th Sess. Chap. 45.)

1858. *Expenses.*—It is the duty of the Board to audit all bills for expenses incurred in the protection or fostering of the sheep industry, under the provisions of this Act, and if found correct, to certify the same to the State Auditor, who shall present the same to the State Board of Examiners, and when approved by said Board, he shall draw a warrant on the State Treasurer in favor of the person or persons entitled to such compensation or reimbursement, in the sum so certified and approved, payable out of the "Sheep Inspection and Indemnity Fund." [*Act approved February 28, 1905, § 5.*] (9th Sess. Chap. 45.)

1859. *Annual report.*—The Board must make an annual report in writing, to the Governor, on or before the 20th day of December in each year. Such report must give a complete statement of the transactions of the Board during the year, and a summary of the reports of the Sheep Inspectors. [*Act approved February 28, 1905, § 6.*] (9th Sess. Chap. 45.)

1860. *Appointment of inspectors.*—The Board of Sheep Commissioners, when in session, or when not in session, the President of said Board must, upon request of any organized wool growers associations in the State, or of any three sheep owners in any county, or upon request of the State Veterinary Surgeon, appoint a capable person as Sheep Inspector for such county, who shall hold his office during the pleasure of the Board, or when the Board is not in session at the pleasure of the State Veterinary Surgeon, and the President of the Board, and must perform the duties hereinafter prescribed. The Sheep Commissioners of each County

may recommend a suitable person for Inspector. The Board of Sheep Commissioners, or when the Board is not in session, the President thereof, or the State Veterinary Surgeon, may when deemed necessary, appoint one or more special Inspectors, who shall make and file the same oath, perform the same duties, and have the same power and authority as Inspectors. The Sheep Commissioner of any county may be appointed Inspector, or Special Inspector, and when acting as such Inspector, or Special Inspector, shall be entitled to the same compensation as Inspector. [Act approved February 28, 1905, § 7.] (9th Sess. Chap. 45.)

1861. *Qualifications and oath of inspectors.*—The Inspector need not be a resident of the county for which he is appointed. He must, before entering upon the duties of his office, take the oath of office prescribed by the Constitution, which oath of office shall be filed with the Secretary of State. The Board of Sheep Commissioners, or when the Board is not in session, the President of said Board, or the State Veterinary Surgeon, may request an Inspector of one county to go to another county and perform the duties of Inspector therein, or to assist the Inspector of such County, and when appointed to assist an Inspector, the Inspector of that county shall have general supervision and control over the work to be performed. [Act approved February 28, 1905, § 8.] (9th Sess. Chap. 45.)

1862. *Enforcement of quarantine.*—The Board of Sheep Commissioners, and when the Board is not in session, the President of said Board, or the State Veterinary Surgeon, may employ persons to take charge of all diseased sheep when in quarantine or otherwise, upon refusal of owners to take proper care and to assist the Sheep Inspector, and the person so employed shall be under the supervision and control of the Sheep Commissioner and Inspector of that county. [Act approved February 28, 1905, § 9.] (9th Sess. Chap. 45.)

1863. *Duties of inspectors.*—The Inspector must inspect all sheep within his county, which he may have received notice or information are affected with, or have been exposed to any infectious or contagious disease, and in case he finds the same are not so diseased, or exposed, he must make and issue a certificate, stating such facts; but if the sheep are affected with or have been exposed to any infectious or contagious disease, they must be quarantined, and the regulations for their quarantine holding and keeping must be at once made by such Inspector, each Inspector so appointed must personally supervise the dipping of, or otherwise treating of all scabby or diseased sheep within his county, and appoint the date for each and every dipping. He has the right with the advice and consent of the State Veterinary Surgeon, to determine and superintend the preparation and mixture of material used in dipping the sheep, and must cause all sheep so quarantined to be

distinctly marked with a red letter "S" on the right side. In the discharge of his duties, the Inspector shall, so far as practicable, comply with the instruction, rules and regulations prescribed by the State Veterinary Surgeon, and the Board of Sheep Commissioners. All sheep dipped shall be held in quarantine at least ninety days after the last dipping, or until released therefrom by the Inspector upon the order of the State Veterinary Surgeon. [*Act approved February 28, 1905, § 10.*] (9th Sess. Chap. 45.)

1864. *Quarantine of infected sheep.*—Upon receipt of information of any of the facts mentioned in the preceding Section, or that any sheep within his County are affected with or have been exposed to any infectious or contagious disease, the Inspector must immediately cause such sheep, and all sheep running in the same flock, or upon the same or contiguous range with them, to be examined, and if found so diseased or exposed to disease, to be quarantined and held within a certain limit or place, to be designated by him, and such sheep must be held in quarantine until the owner or person in charge, or the Inspector has eradicated such scab or other infectious disease, and the Inspector issues a certificate stating such facts and releasing such sheep from quarantine. When sheep infected with, or which have been exposed to, any infectious or contagious disease, have been kept in any building or corral, the Inspector must inspect and quarantine such premises, and prohibit any sheep being placed therein until such premises have been cleaned and thoroughly disinfected, which must be attended to within ten days from date of quarantine. [*Act approved February 28, 1905, § 11.*] (9th Sess. Chap. 45.)

1865. *Quarantine of infected premises and diseased animals.*—In all cases of scab, or other infectious or contagious disease among sheep in this state, the state veterinary surgeon, deputy state veterinary surgeon, or inspector, has authority to order a quarantine of the infected premises and diseased animals, or animals exposed to such disease, and to define the limits within which such sheep must be kept, and to prohibit any other animals from being driven into or across or kept within such quarantine limits; *Provided*, that in all cases sheep shipped into this State must be quarantined separately, and in no case shall foreign sheep be mixed or quarantined on the same area with native sheep, and all native sheep must be quarantined within the limits of their accustomed ranges and in case such disease becomes enzootic or epizootic in any locality in this state, the president of the board of sheep commissioners, or the state veterinary surgeon, or the inspector must immediately notify the governor of the state, who must, thereupon issue his proclamation, forbidding any sheep to be transferred from such locality without a certificate from the state veterinary surgeon or inspector, showing such sheep to be free from any infectious or contagious disease, and forbidding all

persons from driving any other sheep into or across such locality, or keeping or herding them therein. Any sheep going, or being driven into or across such prohibited locality or quarantine premises, shall be deemed exposed to such infectious or contagious disease, and may be declared and detained in quarantine, and if deemed necessary by the state veterinary surgeon or inspector may be dipped. [*Act approved March 8, 1907, § 3.*] (*10th Sess. Chap. 173.*)

1866. *Governor may prohibit importation of sheep from infected districts.*—Whenever the Governor has reason to believe that any of the diseases mentioned in this Article or any infectious or contagious diseases has become enzootic or epizootic in certain localities in any other state or territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation designate such localities, and prohibit the importation from them of any sheep into this State, except under such restrictions as he, after consultation with the President of the Board of Sheep Commissioners or State Veterinary Surgeon, may deem proper. Any person, who, after publication of such proclamation, knowingly receives in charge any such sheep from any of the prohibited districts, or transports or conveys the same to and within the limits of any of the counties of this State, is punishable, as hereinafter provided, and is liable for all damages which may be sustained by any person, by reason of the importation, transportation, or reception of such prohibited sheep. [*Act approved February 28, 1905, § 13.*] (*9th Sess. Chap. 45.*)

1867. *Duty of importers of sheep to notify state veterinary surgeon.*—Upon the issuing of a proclamation by the Governor, imposing restrictions upon the importation of sheep from any other country, state or territory, the owner or person in charge of sheep being shipped or driven into the State of Montana from any country, state or territory against which quarantine has been declared, must forthwith notify, by telegraphic dispatch, the State Veterinary Surgeon at Helena, Montana, stating from what country, state or territory said sheep are being shipped or driven, the number thereof, and where they will first arrive in this State or be unloaded. [*Act approved February 28, 1905, § 14.*] (*9th Sess. Chap. 45.*)

1868. *Inspection of sheep in transit.*—Whenever the state veterinary surgeon receives the notice mentioned in the preceding section, or obtains knowledge that any sheep have been, or are about to be shipped or driven from any state or territory to this state, he shall immediately notify the inspector of the county into which such sheep shall first come or be unloaded; and it shall be the duty of the said inspector to inspect said sheep immediately upon their arrival within his county, and make such order, and take such action with reference thereto as he may deem necessary, as

provided in section 1871 (18) of this act. Whenever any inspector receives notice or information that any sheep have been, or are about to be shipped or driven into this state from any state or territory, it shall be his duty to at once notify the state veterinary surgeon. When any sheep are delivered to any railroad or transportation company, for shipment to this state, as the point of destination, it shall be the duty of such railroad company to notify the state veterinary surgeon, by telegraph, the date of said shipment, the name of the place from which they are shipped, the point of destination, the name of the consignor and the consignee, and the probable date of the arrival of said sheep at the state line of Montana; and when any sheep are billed to be shipped through the state, and afterwards the point of destination is changed to some place within this state, it shall be the duty of the railroad or transportation company, upon receiving a request to change the point of destination, to notify the state veterinary surgeon, by telegraph, giving the name of the consignor and consignee, and the point of destination to which the shipment is changed. [*Act approved March 8, 1907, § 4.*] (10th Sess. Chap. 173.)

1869. *Payment of expenses for inspecting and caring for diseased animals.*—The expenses of inspecting, feeding, holding, dipping, treating, marking, and taking care of all sheep inspected, quarantined, dipped, or otherwise treated under the provisions of this act, including the fees and expenses of the inspector, on account of services rendered in connection with the same, must be paid by the owner, agent or person in charge of such sheep, and such charge shall be a lien upon such sheep for such charges and expenses, which lien shall be prior and paramount to any and all other liens, demands, or other claims against such sheep, and the inspector may retain possession of such sheep until such charges and expenses are paid; but such lien shall not be dependent upon possession, and such lien may be foreclosed in the name of the inspector, by a sale of the sheep, or as many thereof as may be necessary to pay the same and costs of sale at public auction, on ten days' notice, given by posting notices thereof in three public places in said county, or such lien may be foreclosed by an action in any court of competent jurisdiction, or an action may, without foreclosing such lien, be maintained in any court of competent jurisdiction against the owners of such sheep to recover the amount of such charges and expenses; *provided, however*, that for inspecting and dipping sheep which have been within this state six months immediately preceding such inspection, the fees and expenses of the inspector for inspecting and superintending the dipping of such sheep, and all other fees, and expenses of such inspector, connected with such inspection and dipping of said sheep, shall be paid out of the sheep inspection and indemnity fund. [*Act approved March 8, 1907, § 5.*] (10th Sess. Chap. 173.)

1870. *Duty of railroad company to notify state veterinary surgeon.*—It shall be the duty of the railroad or transportation company to notify the State Veterinarian of proposed shipments and their destination, as soon as said railroad or transportation company is notified by the shipper. In no case must any sheep affected with, or having been exposed to any infectious or contagious disease, be removed, or allowed to be removed, from one point to another, within any county, or from one county to another in this state, without a written certificate from the state veterinary surgeon, or an inspector. It shall be unlawful for any railroad company or transportation company to ship sheep from one place to another, within this state, in cars in which other sheep have been shipped, until such cars have been cleaned and carefully disinfected, under the direction of the state veterinary surgeon, or an inspector, who shall give a certificate of such inspection, which shall accompany the shipment. It shall be the duty of every railroad or transportation company, before cleaning or disinfecting any such car or cars, to give notice to the state veterinary surgeon, at Helena, Montana, at least five days before the cars are to be so cleaned and disinfected; and it shall be the duty of the state veterinary surgeon, upon such notice being given, to inspect, or cause to be inspected by an inspector, on or before such date, such car or cars, so cleaned and disinfected, and to give the proper certificate therefor. It shall be the duty of every railroad or transportation company in this state to keep all yards, corrals, sheds or buildings in this state, used by such company for holding or feeding sheep in transit, and all cars used for shipping sheep, clean and free from infection from scab, or other infectious or contagious disease; and it shall be the duty of the state veterinary surgeon and inspector to inspect such yards, corrals, sheds, buildings and cars, when deemed necessary, and if the same are infected or exposed to infection from any infectious or contagious disease, to at once notify such company of such fact, and declare such premises and cars in quarantine, and forbid any animals from being placed or kept therein, until the said premises and cars are disinfected; and it shall be the duty of the said company to cause said premises and cars to be thoroughly cleaned and disinfected, under the supervision of the state veterinary surgeon, and if he fails to do so within five days after such notice, the state veterinary surgeon or an inspector shall cause said premises and cars to be disinfected. The state veterinary surgeon and the inspector shall have authority to enter into all such cars, yards, corrals, sheds or buildings, for the purpose of inspecting or disinfecting the same. The fees and expenses of the state veterinary surgeon and the inspector, and all expenses incurred in inspecting and disinfecting such premises and cars, shall be a charge against such railroad or transportation company, and may be recovered in a

civil action in any court of competent jurisdiction. The notice above mentioned may be served upon the agent or other officer in charge of the station, at which such yards, corrals, sheds, buildings, or cars are situated. [*Act approved March 8, 1907, § 6.*] (*10th Sess. Chap. 173.*)

1871. *Duty of state veterinary surgeon to inspect.*—Within five days previous to the arrival of any sheep into this State, from any other state or territory, the owner or agent in charge of such sheep must report by telegraphic dispatch, to the State Veterinary Surgeon, at Helena, Montana, stating from what country, state or territory such sheep are shipped or being driven from, the number thereof, and the place where they will first enter the State, and where it is intended to unload them, or, such notice may be given by registered mail, if mailed in time, so that in the ordinary course of mails it will reach the State Veterinary Surgeon's office five days before such sheep would reach the State, and the State Veterinary Surgeon shall, immediately on receipt of such notice, notify the Inspector of the county in which the sheep shall first come to be unloaded, and it shall be the duty of such Inspector to immediately inspect the same, and to make such order or orders for their quarantine, treatment and dipping as he may deem necessary. [*Act approved February 28, 1905, § 18.*] (*9th Sess. Chap. 45.*)

1872. *Dipping of sheep temporarily in state.*—Any sheep that are shipped or driven into this state, with the intention on the part of the owner of holding them within the state longer than is necessary to feed them in transit, which feeding must be done in the railroad stockyards, corrals, or buildings, must be at once quarantined and dipped under the supervision of the state veterinary surgeon or inspector, at the point of entry or unloading, or as near such point as may be deemed safe by the state veterinary surgeon or inspector in charge, without danger of scattering infection, and when so dipped, shall be branded with a red letter "S" on the right side. After said sheep are so dipped and branded, they may be moved to the ranch or range where it is the intention of the owner to keep them, providing they can be moved to such ranch or range within ten days, when they must be dipped a second time; and when such sheep have been shipped or driven from any territory or locality in any other state or territory that is declared by the chief of the United States Bureau of Animal Industry to be free from such scab or other contagious or infectious disease, and are accompanied by a certificate from the Federal Inspector, acting under the authority of the chief of the United States Bureau of Animal Industry, setting forth that such sheep have been shipped or driven from a locality or territory free from scab or other contagious or infectious disease, and that such sheep were free from scab or other contagious or infectious disease at the

time they were shipped or driven from such locality, the state veterinary surgeon may, in his discretion, release said sheep from quarantine after the second dipping, *provided, however*, that all rams so imported must be dipped and treated as herein provided, and shall under no circumstances be released from quarantine within less than ninety days after the last dipping, and should said rams be allowed to run with other sheep before the expiration of ninety days, said sheep must be quarantined for a period which would complete the ninety days quarantine on the rams; and that all sheep shipped or driven from any territory or locality of any state or territory not certified by the chief of the United States Bureau of Animal Industry to be free from scab, or other infectious or contagious disease, must be detained in quarantine for a period of not less than ninety days after the last dipping, and shall be released only upon the order of the state veterinary surgeon. [*Act approved March 8, 1907, § 7.*] (*10th Sess. Chap. 173.*)

1873. *Fees of inspectors.*—The Inspector in each county shall receive for his services while necessarily employed in the discharge of his duties, not exceeding Eight (\$8.00) Dollars per day, which includes all necessary traveling and other expenses incurred in going to and returning from the place where such inspection is had, or other services performed. [*Act approved February 28, 1905, § 20.*] (*9th Sess. Chap. 45.*)

1874. *Authority of state veterinarian.*—The State Veterinary Surgeon or Deputy State Veterinary Surgeon shall have authority concurrent with the Inspector to inspect and quarantine sheep and do any and all other acts, and make any and all orders that the Inspector or Sheep Commissioner is by this act authorized to do or make, and shall have authority to supervise and direct the action of the Inspectors in the discharge of their duties. And the State Veterinary Surgeon shall have authority to prescribe how sheep shall be dipped or otherwise treated, the kind of dip, which may be anyone recognized by the United States Bureau of Animal Industry, and to make rules and regulations for the instruction and guidance of the Inspectors in the discharge of their duties. [*Act approved February 28, 1905, § 21.*] (*9th Sess. Chap. 45.*)

1875. *Statement of expenses.*—Whenever any inspector files in the office of the State Auditor any bill with proper reports and vouchers, duly approved by the President and the Board of Sheep Commissioners, setting forth:

1. The name in full of such Inspector.
2. The kind and nature of the services rendered.
3. The particular locality where the work was done.
4. The time when, and the length of time employed.
5. The number of sheep inspected and the name of the owner or person in charge.

6. The disease or diseases treated, the number treated for such disease, and the length of time of such treatment, and the result.

7. The amount claimed, and the value of the services.

8. The amount of expenses necessarily incurred.

9. A statement and account of all money received by him from any owner of sheep on account of services performed under this Act, including any sums realized on account of any lien therefor.

10. The State Auditor must, when such bill is approved by the State Board of Examiners, draw a warrant in favor of such Inspector, payable out of any moneys in the "Sheep Inspection and Indemnity Fund." [*Act approved February 28, 1905, § 22.*] (*9th Sess. Chap. 45.*)

1876. *Inspection record.*—Every Inspector appointed under the provisions of this Article, must keep a book account to be known as the "Inspection Record," in which he must enter and record all his official acts and proceedings. Such record must particularly show the name of the owner of every flock of sheep inspected, when the same was inspected and the number in each flock, the result of such inspection, whether the same were quarantined, the limits of the quarantine, when released therefrom, the names of the persons to whom certificate have been granted, and when, and all orders and directions made in relation to any matters herein designated. He shall notify the Secretary of the Board of Sheep Commissioners when any sheep are brought into his country from any other state or territory, when any sheep are inspected by him and found to be diseased, with the name of the owner, the number thereof, and where located, when any sheep are quarantined by him, the limits of the quarantine, and when such sheep are released therefrom, and furnish such other information as the Secretary of the Board of Sheep Commissioners may, from time to time, require. Upon the termination of term of office, he shall deliver such record to the Secretary of the Board of Sheep Commissioners. [*Act approved February 28, 1905, § 23.*] (*9th Sess. Chap. 45.*)

1877.—*Penalties for violation of the act.*—Any person who brings, or causes to be brought into this state any sheep infected with scab or other infectious or contagious disease, or who shall violate, or in any manner fail to comply with any order made by the state veterinary surgeon, deputy state veterinary surgeon or inspector, or any proclamation issued by the Governor, under the provisions of this act, or who violates or disregards any of the provisions of this act, or who shall in any manner hinder, obstruct or resist the state veterinary surgeon, or deputy state veterinary surgeon, or any inspector, in the discharge of his, or their duties, or shall break any quarantine, or wilfully or negligently permit any sheep to be placed within the limits of any quarantined premises, or any locality prohibited or quarantined under the

proclamation of the governor, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by imprisonment in the county jail, not exceeding one year, or by a fine not exceeding One Thousand Dollars, or by both such fine and imprisonment, and shall be liable for all damages which may be sustained by any person, by reason of such act or acts, which damages may be recovered by such person in a civil action in any court of competent jurisdiction. [*Act approved March 8, 1907, § 8.*] (*10th Sess. Chap. 173.*)

1878. *Reports of inspectors.*—Every Inspector must, on or before the 30th day of November of each year, make a report in writing to the Secretary of the Board of Sheep Commissioners, showing from his inspection record particularly the matters therein contained since his last report which report shall be in triplicate, and one shall be filed in the office of the Secretary of said Board, and one transmitted to the State Veterinary Surgeon, and the said State Veterinary Surgeon must embody the information thus given in his report to the Governor. If such report is not made in triplicate by the Inspector, the Secretary of the Board shall make and certify a copy thereof, and transmit the same to the State Veterinary Surgeon. [*Act approved February 28, 1905, § 25.*] (*9th Sess. Chap. 45.*)

1879. *Employment of specialist.*—The Board of Sheep Commissioners, or the President of said Board when the Board is not in session, shall have authority upon recommendation of the State Veterinary Surgeon, to employ one or more specialists to investigate any subject relative to fostering, promoting and protecting the sheep industry of the State, and cause to be performed any act or thing, which, in their (or his) judgment, is necessary, or would tend to foster, promote and protect the sheep industry. Such specialist or specialists may be employed by the day, week, month or year, and shall be under the direction and control of the Board of Sheep Commissioners, or when the Board is not in session, the President of said Board. The expense of such specialists shall not exceed Five (\$5.00) Dollars per day each, together with actual expenses for transportation. [*Act approved February 28, 1905, § 26.*] (*9th Sess. Chap. 45.*)

1880. *Certificate to run public buck herd.*—No person or persons shall conduct what is known as a public buck herd in this state without first receiving from the state veterinary surgeon a permit to do so. Such permit must be in writing, and signed by the state veterinary surgeon, which said permit must be issued by the Veterinarian upon receipt from such person or persons of an application in writing for the same. All persons receiving a permit to conduct such herds shall, on or before the 15th day of July in each year, report to the state veterinary surgeon the num-

ber of bucks in said herd, the owners thereof, and the number owned by each, and where the said herd is kept, and any subsequent additions made to said herd must be reported to the state veterinary surgeon as soon as made. It shall be the duty of the state veterinary surgeon to cause all such buck herds to be inspected during the month of October in each year, and if he finds such herds to be free from scab, or other infectious or contagious disease, he shall issue a certificate stating such fact, which certificate shall have endorsed thereon the number of bucks in said herd, and the names of the respective owners. After the issuing of such certificate, any of such animals may be removed from such herd. The keeper of such herds shall not permit any animals to be removed from said herd, and no person shall remove any animals therefrom until such inspection and the issuing of such certificate. When any animals are so removed, the keeper of such herd shall give to the owners or persons removing the same a copy of the certificate of the state veterinary surgeon, and such owners or persons must, on demand of any sheep owner in this state, exhibit such certificate. A public buck herd, within the meaning of this act, shall be one consisting of bucks owned by two or more persons not partners. [Act approved March 8, 1907, § 10.] (10th Sess. Chap. 173.)

1881. (§ 3060.) *Rams and he-goats not to run at large.*—It is unlawful for any owner or person having the management or control of any ram or he-goat to permit the same to run at large between the first day of August and the first day of December of each year.

1882. (§ 3061.) *Penalty.*—Any person violating the provisions of this article is guilty of a misdemeanor, and on conviction thereof must be punished as provided in § 8837 (116½) of the Penal Code.

1883. (§ 3062.) *Liability to civil damages.*—Any person damaged by rams or he-goats running at large during the time mentioned in the first section of this article, may recover in a civil action any damages sustained thereby.

ARTICLE XI.

LIVE STOCK SANITARY BOARD.

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| Section | 1884. | <i>Creation of state livestock sanitary board.</i> |
| " | 1885. | <i>Deputy state veterinary surgeon.</i> |
| " | 1886. | <i>Appointment of federal inspectors to act as state inspectors.</i> |
| " | 1887. | <i>Powers and duties of state veterinary surgeon.</i> |
| " | 1888. | <i>Powers and duties of state sanitary board.</i> |
| " | 1889. | <i>Slaughtering of diseased animals.</i> |
| " | 1890. | <i>Notice to owners of animals.</i> |

- Section 1891. Payment for animals slaughtered.*
 “ 1892. *Expenses for treatment of animals.*
 “ 1893. *Duty of state and local boards of health.*
 “ 1894. *Notice of existence of disease to be given.*
 “ 1895. *Board to have authority to administer oaths.*
 “ 1896. *Definition of words and phrases.*
 “ 1897. *Transfer of funds from stock indemnity fund.*
 “ 1898. *Penalties for violating quarantine.*
 “ 1899. *Penalties for allowing diseased animals to run at large.*
 “ 1900. *Diseased animals not to run at large.*
 “ 1901. *What constitutes breaking quarantine.*
 “ 1902. *Reports of state veterinary surgeon.*
 “ 1903. *Repealing clause.*

1884. *Creation of state livestock sanitary board.*—The President of the Board of Stock Commissioners, the President of the Board of Sheep Commissioners, and the President of the State Board of Health of Montana, shall, ex-officio, constitute a Board to be known as the State Live Stock Sanitary Board. Said Board shall have the powers and perform the duties hereinafter defined and a majority of said Board shall constitute a quorum for the transaction of business. The Board shall organize by electing one of their number chairman and whenever the personnel of said Board changes, by the advent of a new member, the Board shall again organize by electing a Chairman. The State Veterinary Surgeon shall, ex-officio, act as secretary of said Board, without extra compensation. The members of said board, who are not receiving annual or monthly salaries as officials of the State, or state boards, or of any county, shall receive the sum of Five Dollars per day for each day the board is in session, and all members shall receive their actual and necessary traveling expenses in going to and from meetings of the board. All claims for per diem and expenses must be sworn to and accompanied with vouchers for each item of expense, and audited and allowed by the State Board of Examiners against the fund hereinafter provided for. Meetings of the Board shall be held upon call of the Chairman, after giving reasonable notice, to the members of the time and place and must not exceed two meetings a year, except in cases of urgent necessity where immediate action of said Board is required to prevent the spread of contagious or infectious diseases. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 152.)

1885. *Deputy state veterinary surgeon.*—The State Veterinary Surgeon may by and with the approval and consent of the State Live Stock Sanitary Board, hereinafter referred to as the Sanitary Board, appoint not more than three permanent special deputies, as occasion may require, hereinafter referred to as deputies, who must be graduates of a regular and reputable veterinary college

or veterinary department of a regular and reputable university. Each deputy permanently appointed shall receive a salary of Fifteen Hundred Dollars (\$1500.00) per annum together with actual and necessary traveling expenses. The said deputies may be removed by the state veterinary surgeon and sanitary board at any time without cause. The state veterinary surgeon and the sanitary board acting jointly are hereby authorized to appoint in various localities of this state, from among veterinarians permanently located therein, deputy veterinary surgeons; and who must have the same qualifications as special deputies, who shall be subject to the orders of the state veterinary surgeon and the sanitary board, and who, together with the permanently employed deputies and the state veterinary surgeon, shall have equal powers, under the direction of the state veterinary surgeon and the sanitary board, in enforcing the provisions of this Act. Such deputies however, shall be paid only for actual services performed when directed so to do by the state veterinary surgeon or sanitary board, and for such services when so directed shall receive the sum of Six Dollars (\$6.00) per diem, together with actual traveling expenses. [*Act approved March 7, 1907, § 2.*] (10th Sess. Chap. 152.)

1886. *Appointment of federal inspectors to act as state inspectors.*—Subject to the approval of the Chief of the Bureau of Animal Industry of the United States, federal inspectors may also be appointed deputy state veterinary surgeons by the state veterinary surgeon with the approval and consent of the sanitary board. When so appointed they shall act without bond or compensation, and possess all the powers and duties of special state veterinary surgeons, and shall hold such appointments at the pleasure of the state veterinary surgeon and the sanitary board, so long as they remain inspectors of said Bureau and as such are stationed in this State. [*Act approved March 7, 1907, § 3.*] (10th Sess. Chap. 152.)

1887. *Powers and duties of state veterinary surgeon.*—The state veterinary surgeon shall have power, and it shall be his duty:

1. To act as Chief Executive Sanitary Officer of the sanitary board, and to do all other things necessary or proper to the successful enforcement of this Act.

2. To control and supervise and direct the action of all deputies.

3. To enter on or in and examine any car, yard, stable, steam boat, corral, or other building, or any premises and to examine any live stock therein or thereon, and otherwise to do therein or thereon whatever may be found necessary or proper in the discharge of his official duties.

4. To quarantine any animal or animals suffering from or exposed to any contagious, infectious, enzootic, epizootic, or danger-

ous disease; to prohibit their moving or transportation without a certificate from him, and to quarantine premises infected or believed to be infected; and to superintend and control the disinfection of any such premises, and to use any curative, protective or immunizing antitoxins or serum, or any diagnostic agents as needed, and to order and accomplish the slaughter of live stock suffering from dangerously contagious or infectious disease, or incurable disease; or live stock exposed to disease, the slaughter or quarantine of which may become necessary under regulations of the board; and to order and accomplish the disposition of the carcasses of such slaughtered live stock; and to superintend, control and accomplish the burial or other disposition of the carcasses of any animals dying from any of said diseases.'

5. To make complaint against any person or persons violating any law relative to live stock, and procure a warrant whenever conditions permit; and to bring the person or persons before the proper magistrate or officer and notify said sanitary board thereof and of his action. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 152.*)

1888. *Powers and duties of state sanitary board.*—The state veterinary surgeon and the sanitary board shall have power, and it is their duty, in addition to the powers now conferred on them by law:

1. To supervise and control the action of all deputies and inspectors, and to prescribe regulations to govern them.

2. To remove all its appointees, subordinates and servants at any time without cause.

3. To supervise the sanitary conditions of live stock of this state; to determine and employ the most efficient and practical means to prevent, suppress, control and eradicate, dangerous, contagious, infectious, enzootic, epizootic, or any dangerous non-contagious disease among live stock within, or live stock coming into or going out of this state, and must recommend to the Governor when necessary the issuance of quarantine proclamations against domestic animals in other states, territories or foreign countries, as occasion demands, and it is hereby made the Governor's duty to issue such quarantine proclamations as may be requested by the state veterinary surgeon and sanitary board against all domestic animals coming into this state from without, or to set aside and specify general quarantine areas within this state on account of animal diseases, when so requested by the sanitary board.

4. To establish and maintain all and any livestock sanitary regulations that may be deemed expedient; or as may be from time to time necessary to prevent and suppress contagious, infectious or dangerous animal diseases. *Provided* that all sani-

tary regulations adopted by the state veterinary surgeon and sanitary board, or to be recommended to the Governor, shall, as far as is possible, be in conformity and harmony with the regulations in that regard of the Secretary of Agriculture of the United States, as the same may exist from time to time; *and provided further*, that in cases of acutely contagious or rapidly fatal diseases, such as anthrax, rinderpest, foot and mouth disease, hog cholera, swine plague, variola or pox, contagious abortion, ophthalmia, colt distemper, or malignant catarrh, or rabies the powers conferred by this paragraph on the board may be exercised by the chairman, *and provided further* that such sanitary board shall cause copies of their regulations from time to time to be printed and furnished to all railway common carriers within this state and all deputies within this state, members of the different health boards and to the sheriffs of each county within the state, who shall keep them posted in their offices, and shall furnish from the office of the state veterinary surgeon other copies thereof whenever requested from time to time.

5. To aid the prosecution of all alleged violations of the law, or violations of the regulations prescribed in conformity with this Act; and to aid prosecution for interfering with the lawful action of their appointive officers.

6. To direct and regulate the slaughter of all diseased animals and the dipping and treating thereof for disease, and to order and regulate the gathering and handling of range and other live stock to that end, and to make all and any necessary regulations or rules or orders relative to the gathering, handling and treating or destruction of any animals mentioned herein suffering from or exposed to any contagious or infectious disease.

7. In the case of scabies, or any other contagious or infectious disease among domestic animals on the public range, if after due notification, the owner, agent or person in charge fails, within ten days, subsequent to such notification from the state veterinary surgeon, or deputy, or sanitary board, to take such animal or animals up and properly treat the same, under the direction of the state veterinary surgeon, or deputy then the sanitary board shall have authority to order the rounding up of such animal or animals and procure the proper treatment of the same by the state veterinary surgeon or deputy, all of which expense shall be a first lien upon the animal or animals and said lien shall take precedence over all other liens. *Provided*, in case of scabies the time for gathering and rounding up range animals may be extended by written order of the sanitary board to a period not exceeding sixty days from date of notification, or in case of emergency, on account of acutely fatal diseases, may be limited by said board to twenty-four hours or less, as in their judgment is necessary. *Provided further*, that if any of said do-

mestic animals on the public range are estrays and the owner thereof is not known and cannot with reasonable diligence be found, then the sanitary board shall have the same authority to order the rounding up of and to procure the treatment of said animal or animals as is herein conferred upon it in handling animals other than estrays and said stray animals shall be subjected to all the provisions of this section; *and provided further* that any animal or animals upon which a lien is created by this section, may upon order of the sanitary board, be sold at public sale to the highest bidder, after at least ten days notice, to be given in such manner as the sanitary board may provide. The proceeds from such sale to be applied, first in satisfying said lien and the balance if any to be turned over to the owner if known. If the owner of the animal or animals so sold is not known then the balance if any to be deposited with the Secretary of the Board of Stock Commissioners, to be by him held subject to proof of ownership of the animal or animals sold for a period of two years from the date of sale, at which time if no person has proven his ownership of the animal or animals sold, such balance must be transferred to the credit of the stock indemnity fund, and no action for the recovery thereof by the owner of such animal or animals or his assigns shall thereafter be maintained. [Act approved March 7, 1907, § 5.] (10th Sess. Chap. 152.)

1889. *Slaughtering of diseased animals.*—Two classes of animals may be slaughtered:

1. Animals determined by either the state veterinary surgeon or a deputy to be affected with disease requiring slaughter. No animals of this class shall be paid for, save when a mistake as to the existence of a slaughterable disease is discovered upon autopsy.

2. Animals so exposed to disease as to require their slaughter as a sanitary safeguard. These shall be paid for, subject to the conditions hereafter mentioned in this Section, and as provided in § 1891 (8) of this Act. No payment to be made for cats and dogs. Animals of the second class shall only be killed after notice, save those animals not in the direct custody of any person and whose owner is either unknown or resides so far away as to make immediate notice impracticable. And animals of both classes shall only be slaughtered by the owner or custodian, or his or their agents, or by the state veterinary surgeon or deputy. *Providing* that animals otherwise subject to be paid for on slaughter shall not be paid for under any of the following conditions:

1. When they belong either to the United States or to this State, or to any municipality therein.

2. When they have been brought into this State contrary to the provisions of this Act, or regulations or orders made there-

under, or when exposed to disease either before, or at the time of their arrival in this State, or when the owner or claimant knew that they had been exposed when he acquired them:

3. When, before exposure, it was suffering from any other incurable or necessarily fatal disease.

4. When the owner or custodian has violated the provisions of Section 1898 (15) of this Act, as to notice concerning exposed animals or otherwise. [*Act approved March 7, 1907, § 6.*] (*10th Sess. Chap. 152.*)

1890. *Notice to owners of animals.*—When the state veterinary surgeon or deputy, shall have determined after inspection, that an animal of the first class must be slaughtered and notice is required, he shall give written notice to either the owner or custodian; which notice must designate the disease, and require such owner or custodian to kill the animal, and where burial or burning of the carcass is desired, to bury or burn it, in manner and time to be declared therein, and must be either personally served or served by mail or by leaving in daytime at the residence of such owner or custodian, with any person over fifteen years of age.

2. If such owner or custodian fails to comply with such order the state veterinary surgeon or a deputy may forthwith seize such animal or animals and enforce the order at the cost of such owner or custodian. If such owner or custodian dispute the existence of such disease or any slaughterable disease, he shall serve a written notice of protest on the state veterinary surgeon or deputy (serving original notice) and shall fix in such notice of protest a time and place (the former not later than 136 hours after the service of said original notice) when and where he will kill such animal or animals. Such notice of protest shall be served in season to enable the state veterinary surgeon or deputy to attend the killing. And thereupon the state veterinary surgeon or a deputy shall attend the killing and hold an autopsy on such animal or animals in the presence of the owner, or custodian or any other person by him selected to be present. If on such autopsy, no pathological lesion of a disease requiring slaughter can be found, the animal or animals shall be paid for as in the case of animals of the second class. But if found part of the tissue of each animal showing such lesion shall at the time be delivered to such owner, custodian or representative, the receipt of the latter taken therefor, and another part of said tissue and said receipt sent to the state veterinary surgeon, who shall retain them until the claim is finally disposed of. On any killing after notice of protest, a right of action shall arise in favor of the owner or custodian, against said sanitary board; but recovery in such action shall not be had unless the non-existence of such lesion at the time of the killing be affirmatively

proven. And judgment recovered by any plaintiff in such action shall be paid out of the stock indemnity fund, created by this Act. In all cases where animals of the first class are killed without notice, autopsy shall be held, and a certificate of the discovery or non-discovery of lesion, together with part of tissue forwarded the state veterinary surgeon as above, save when the animal or animals to be slaughtered show unmistakable symptoms of disease requiring slaughter, in which event a certificate stating said fact shall be forwarded the veterinary surgeon.

3. When no lesion is found and the value of the meat for human consumption has not been affected, the veterinary surgeon holding autopsy shall issue a permit of sale and the carcass may be sold for food, after inspection and proper certification of such fact is made by the state veterinary surgeon or deputy. [*Act approved March 7, 1907, § 7.*] (10th Sess. Chap. 152.)

1891. *Payment for animals slaughtered.*—Whenever animals are to be paid for under the provisions of this Act, they shall be paid for out of the stock indemnity fund, by this Act created, upon an order of said Board, after the valuation thereof has been to it certified. Said valuation must be made by the veterinary surgeon or deputy veterinary surgeon ordering the slaughter or killing of the animals on holding the autopsy or in case of animals of the second class killed by order of veterinary surgeon or deputy veterinary surgeon or by the state veterinary surgeon on information to him furnished by said deputy, he must truly estimate the actual cash value at the time of killing, but in no instance shall his valuation exceed the following: In the case of cattle; for common bloods, not exceeding \$35.00 per head for any male animal, four years old and upwards, and for any female animal four years old and upwards, not exceeding \$25.00 per head and proportionately less for lesser ages. For graded stock, not exceeding \$40.00 per head for any male animal four years old and upwards, and for any female animal four years old and upwards not exceeding \$35.00 per head and proportionately less for lesser ages. And for all full bloods, for any male animal four years old and upwards not exceeding \$100.00 per head, and for any female animal four years old and upwards not exceeding \$75.00 per head and proportionately less for lesser ages. In the case of horses, for common bloods, not exceeding \$25.00 per head for each animal four years old and upwards and proportionately less for lesser ages. For graded stock, for each animal four years old and upwards not exceeding \$50.00 per head and proportionately less for lesser ages. And for full bloods for any animal four years old and upwards, not exceeding \$125.00 per head and proportionately less for lesser ages. In the case of goats and swine, not exceeding their market value for meat by weight. A slaughterable disease shall be deemed any

disease contagious or infectious that is incurable and dangerous or communicable to mankind, such as glanders among horses, asses, and mules, or tuberculosis, rabies and anthrax among all animals. *Provided* that in tuberculosis of cattle, the sanitary board may direct the state veterinary surgeon to detain such cattle in quarantine subject to eradication by the so-called Bang System or other improved system approved by said Board. [*Act approved March 7, 1907, § 8.*] (10th Sess. Chap. 152.)

1892. *Expenses for treatment of animals.*—The owner or custodian shall be alike liable for expense incurred in the treatment, dipping, handling, of any live stock under the provisions of this Act, and whenever such owner or custodian is so liable for any such expense, the said sanitary board may have a lien on such live stock and any other live stock owned by the person liable, which lien shall be a first lien and superior to any other lien, claim or demand against said property. The sanitary board may also maintain a civil action for the amount of such expense against the person liable therefor. [*Act approved March 7, 1907, § 9.*] (10th Sess. Chap. 162.)

1893. *Duty of state and local boards of health.*—It is hereby made the duty of the State and several local Boards of Health of any county, city, town or village in the state, to co-operate with and assist the said sanitary board in all matters, relating to the execution of its sanitary powers as to live stock under this Act, in such manner as may be by said sanitary board prescribed, either by general regulation or direct order. [*Act approved March 7, 1907, § 10.*] (10th Sess. Chap. 152.)

1894. *Notice of existence of disease to be given.*—Any person including the owner or custodian, who has reason to suspect the existence of any disease mentioned in this Act among livestock, or the presence of exposed animal or animals at any point within the state shall forthwith give notice thereof to the state veterinary surgeon. [*Act approved March 7, 1907, § 11.*] (10th Sess. Chap. 152.)

1895. *Board to have authority to administer oaths.*—Whenever in the exercise of their powers or the discharge of their duties, it shall become necessary or proper, for any member of said sanitary board, or the state veterinary surgeon, or any of his deputies, to investigate facts and conditions, he is hereby authorized to administer oaths, take affidavits and compel the attendance and testimony of witnesses being given for such purpose all the powers of a Notary Public. [*Act approved March 7, 1907, § 12.*] (10th Sess. Chap. 152.)

1896. *Definition of words and phrases.*—The phrase “dangerous, contagious, infectious, enzootic and epizootic,” as used in this Act, shall be deemed to include glanders, farcy, tuberculosis, anthrax, rinderpest, rabies, foot and mouth disease, pleuro-pneu-

monia, cholera, swine plague, variola or pox, contagious abortion, contagious ophthalmia, mal du coit, coital exanthema, scab or scabies, or any other contagious skin disease, blackleg, malignant catarrh, and any other disease of live stock that may be controlled or eradicated by sanitary measures or regulations. The word "live-stock" as used in this Act, shall be deemed to include horses, mules, asses and cattle, goats, swine, dogs and cats. [Act approved March 7, 1907, § 13.] (10th Sess. Chap. 152.)

1897. *Transfer of funds from stock indemnity fund.*—The State Treasurer is hereby authorized to transfer out of any moneys in the General Fund, not otherwise appropriated, the sum of Ten Thousand Dollars, which, in addition to the sum now carried in the Stock Indemnity Fund, shall be known as the "Stock Indemnity Fund," which fund must be used exclusively to defray all expenses created by this act, except the salaries of the state veterinary surgeon, his regular deputies and his stenographer, which shall be paid out of the General Fund. [Act approved March 7, 1907, § 14.] (10th Sess. Chap. 152.)

Note.—See act approved March 8, 1907. (10th Sess. Chap. 172.)

1898. *Penalties for violating quarantine.*—If any owner or custodian or any other person shall wilfully or intentionally break any quarantine and remove any quarantined animal or animals from any established quarantine to another point; or shall take any animal or animals into any established quarantine, or shall wilfully or intentionally drive or transport from one point to another any animal or animals known by him to be affected with or exposed to any contagious or infectious disease; or shall wilfully or intentionally, dispose of the carcass of any affected or exposed animal or animals of any kind for consumption as food; or shall wilfully or intentionally sell milk from any such animal or animals, without permit from the state veterinary surgeon, or deputy, or fails to notify the state veterinary surgeon of the existence of contagious or infectious disease among his animals, or exposure thereto, or shall wilfully violate any provisions of this Act, or any regulation or orders lawfully made in conformity therewith; or shall in any manner hinder, resist or obstruct the execution of any such regulation or order, or hinder, resist or obstruct any officer or employee of said sanitary board in the discharge of his duty, or in the exercise of his lawful powers, or shall negligently break any quarantine, or shall negligently suffer any quarantined animal or animals to escape from quarantine, or take or allow any animal or animals to go into any quarantine, shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not more than Five Hundred Dollars, or imprisonment in the County jail not more than six months or both such fine and imprisonment. [Act approved March 7, 1907, § 15.] (10th Sess. Chap. 152.)

1899. *Penalties for allowing diseased animals to run at large.*—It shall be unlawful for any owner, agent or person in charge of, to permit any domestic animal or animals herein mentioned, and that is known to be suffering from or exposed to any contagious or infectious disease, to run at large on the public range or public highways, and each such offense shall be punishable by a fine of not less than \$25.00 nor more than \$500.00 or imprisonment in the county jail for a period of not more than six months or both. [Act approved March 7, 1907, § 16.] (10th Sess Chap. 152.)

1900. (§ 3063.) *Diseased animals not to run at large.*—It is unlawful for the owner or for any person having in charge any horse, mule, ass, sheep or cattle affected with any contagious disease to allow such diseased animal to run on any range, or within any enclosure where such animals may come in contact with any other animal not so diseased. All animals so affected with contagious disease must be at once removed by the owner thereof, or the person in charge of the same, to some secure inside inclosure, where contact with other animals by reaching over or through the fence of said enclosure will be impossible, or must be strictly herded six miles away from any farm or from any other stock running at large or being herded. Every person who knowingly neglects or refuses to remove or to so inclose or herd away from farms or other stock such diseased animals affected with contagious disease, after having received notice of their diseased condition, is punishable as provided in § 8531 (700) of the Penal Code, and is liable for damages to the party injured.

1901. *What constitutes breaking quarantine.*—Breaking quarantine shall mean the taking of any animal or animals or allowing any animal or animals (of the kind quarantined by the state veterinary surgeon or a deputy) to go into or out of any building, corral, premises or range quarantined by the state veterinary surgeon or a deputy. [Act approved March 7, 1907, § 17,] (10th Sess. Chap. 152.)

1902. *Reports of State Veterinary Surgeon.*—The state veterinary surgeon shall make, on or before the tenth of December each year, a written report to the Sanitary Board, which report must be transmitted by them to the Governor. The Deputy Veterinary Surgeon must make monthly and annual report to the state veterinary surgeon, such reports to be included in the annual report of the state veterinary surgeon. [Act approved March 7, 1907, § 18.] (10th Sess. Chap. 152.)

1903. *Repealing clause.*—All Acts and parts of Acts in any manner conflicting with this Act are hereby repealed, saving, however, the right to prosecute all civil or criminal actions that may have arisen under these provisions, which actions may be

prosecuted with like force and effect as if said Acts had not been repealed. [*Act approved March 7, 1907, § 19.*] (*10th Sess Chap. 152.*)

ARTICLE XII.

BOUNTIES FOR KILLING WILD ANIMALS.

Section 1904. Bounties, for wolves, coyotes and mountain lion.

- " 1905. *Claimant shall exhibit skin.*
- " 1906. *Bounty inspectors.*
- " 1907. *Proof of killing.*
- " 1908. *Warrants for bounties.*
- " 1909. *State bounty fund.*
- " 1910. *Application of surplus funds.*
- " 1911. *Perjury. Forgery. Penalty.*
- " 1912. *Fraud. Penalty.*
- " 1913. *Certificate of bounty claim; how made.*
- " 1914. *Erasures or obliteration of writing on bounty certificates.*
- " 1915. *Repeal. Construction.*

1904. *Bounties, for killing wolves, coyotes and mountain lion.*
—That there shall be paid out of the fund named in Section *3076 of the Political Code of the State of Montana, as approved by an Act approved March 6th, 1903, created for the killing in the State of Montana, the following bounties: For each grown wolf, \$10.00; for each coyote \$3.00; for each wolf pup \$3.00; for each coyote pup \$3.00; for each mountain lion \$10.00. [*Act approved March 1, 1905, § 1.*] (*9th Sess. Chap. 49.*)

* Note.—This section was repealed by Acts 1907, Chap. 172. But see Revised Codes, § 1909.

In re Terrett, 34 Mont. 331; 86 Pac. 267.

1905. *Claimant shall exhibit skin.*—Any person killing any of the aforesaid animals, except mountain lions, to obtain bounty thereon, shall, within sixty days of the date of the killing, except the skin or skins of the said animal or animals including the tail and the skin from the entire head, including the ears thereof, to the Bounty Inspector nearest to the locality in which the animal or animals were killed; and shall at the same time, file with the Bounty Inspector, as hereinafter provided, an affidavit setting forth that he killed the animal or animals from which the skin or skins were taken; that the same was killed nearer to, or if more than one hide is presented, that the greater number were killed nearer, to the residence of the said Bounty Inspector to which the same was presented, than to any other Bounty Inspector, and also state the county or counties in which said animals were killed, and every Bounty Inspector appointed

under the provisions of this Act shall be empowered to administer oaths to any and all persons making any affidavit as aforesaid; *Provided, however*, that any person killing any mountain lion to obtain bounty thereon, shall present the same to a Bounty Inspector as provided in this Section for wolves and coyotes, except that in addition to the requirements of this Section the skins of mountain lions shall also contain the entire skin of the lower jaw which shall be severed by the Bounty Inspector and thereafter treated in the same manner as scalps of wolves and coyotes herein provided. [*Act approved March 1, 1905, § 2.*] (*9th Sess. Chap. 49.*)

1906. *Bounty Inspectors.*—It shall be the duty of the Judge of the District Court presiding over any of the counties within the state to forthwith appoint three representative stock growers, whose duty it shall be to appoint, not to exceed ten Bounty Inspectors within any of the Counties of the State, whose duty shall be to receive and examine all skins or pelts presented for bounty within their respective localities; the said Bounty Inspectors shall receive ten cents for each skin examined, said amount to be paid by the owner of said skin; and each shall take the oath of office provided in case of county officers, said oath to be filed with the County Clerk of the County wherein he shall be appointed; each Bounty Inspector shall to prevent fraud, minutely examine each skin presented, and should such examination disclose that the scalp and ears, with the skin from the entire head of each animal or animals, has not been severed, punched, patched or in any manner marked, he shall there in the presence of the persons presenting such skin, mark each skin by severing the skin from the head, including the ears, and then redeliver the skin or skins to the person presenting the same, and shall require the affidavit of one resident taxpayer residing in the vicinity in which said animal or animals were killed, setting forth that he is a resident taxpayer, and taxpayer on live stock in said county, giving his postoffice address and stating that he is personally acquainted with the person presenting the skin or skins, and to his knowledge, information and belief, said person did kill or cause to be killed the animals from which the skin or skins were taken, within sixty days preceding the offering of such skins for bounty, in the locality nearest to where said Bounty Inspector resides, and at the same time make out and deliver to said person, a certificate addressed to the County Clerk of his County, and immediately mail to said County Clerk a duplicate thereof, showing the date, number and kind of skins so marked by such severing, and the name of the person presenting the fact of the filing of the affidavit herein provided for, and the examination made as required; and said certificate shall be duly signed by him in his official capacity; *Provided*, that

when any doubt shall exist as to the kind of skin or skins presented, whether wolf or coyote, the certificate shall be issued for the lesser bounty, and each Bounty Inspector shall keep a record in a bound book of all the skins so marked and served, showing the date, number and kinds, the names of the persons presenting the same, which book shall be a book of official record, and the Bounty Inspector shall immediately string upon a wire all of the said scalps, including the ears thereof as severed by him, and securely seal ends of said wire with a lead seal by means of a punch, both to be furnished by the State Board of Stock Commissioners, each punch to contain a letter of the alphabet and no two punches in the same County to contain the same letter, and numbering seal with a number corresponding with the number of Bounty Certificate issued for the skin or skins contained thereon together with his letter; all wolf, coyote, pup wolf, and pup coyote heads to be strung on separate wires, respectively, and so noted on said certificate the number of the heads on said wire. The Bounty Inspector is not authorized to examine any skin or issue any certificate except on the first three days of each month, and any examination made by him or certificate issued on any other day is void. The Bounty Inspector shall, not later than the 15th of each month, render to the County Clerk and Recorder of the County in which he resides a report setting forth the names of the persons presenting the skins, with the number of the certificate, the kind and number of the skins so presented, as to each and every certificate which he has issued during said month. The County Clerk shall upon the receipt of each said certificate file the same in the order in which they are received, and safely keep them until the arrival of the skin or skins mentioned in such certificate, properly sealed as hereinbefore provided, and upon the receipt of said skin or skins so sealed, he shall call to his assistance either the County Treasurer, or in his absence, the Clerk of the District Court, who being present, shall both, in order to prevent fraud, minutely examine each scalp strung upon each wire, and should such examination disclose the scalps as heretofore specified, of such animal or animals, agree with the number and kind of scalps or lower jaw of mountain lion mentioned in these said certificates, the County Clerk shall thereupon, in the presence of said Treasurer or Clerk of District Court, destroy said scalps without removing same from said wire, by fire; and said County Clerk shall then make out and deliver to the person named in said certificate, a second certificate showing the same statement of facts, as contained in the certificate of the Bounty Inspector with the additional statement of the examination so made by him; and that he found said scalps to agree with the number and kind mentioned in the certificate of said Bounty Inspector, and so

stated therein in said certificate. In no case should a bounty certificate be issued by the Clerk and Recorder for more scalps than are actually received and counted by him, and the County Clerk and Recorder shall receive for each scalp or mountain lion lower jaw accounted for by him, the sum of five cents each to be paid quarterly by the Treasurer out of the Bounty Fund. The County Clerk shall keep a record in a bound book of all certificates so received and issued, showing the date, and description of the number and kind of hides, and the names of the person presenting the same, which book shall be an official record. [*Act approved March 1, 1905, § 3.*] (9th Sess. Chap. 49.)

State v. Newman, 34 Mont. 436; 87 Pac. 462. A person appointed to act as bounty inspector, and who, while acting as such, was charged with forgery of bounty certificates, is a de facto officer and cannot raise the question of the invalidity of the act under which he was appointed.

1907. *Proof of killing.*—Should any Clerk or Bounty Inspector have reason to believe that any person presenting the skin or skins as above provided, has evaded the provisions of this Act to obtain the bounty unlawfully, he shall require satisfactory evidence of the time, place and manner of the killing of said animal or animals. [*Act approved March 6th, 1903, § 5.*] (8th Sess. Chap. 94.)

1908. (§ 3074.) *Warrants for bounties.*—It shall be the duty of the state auditor, upon the written order of the state board of examiners, to give the person presenting said order a warrant upon the state fund hereafter provided for, for the amount required to compensate, at the bounty prices by this act provided and awarded, for the number of animals mentioned in the order, taking the receipt on the back of the order of the person presenting for the full amount received; and the state auditor and the state treasurer shall keep an account of all warrants so issued and paid and list them in their annual report to the governor. [*Act approved Feby. 26, 1895.*]

1909. (§ 3075.) *State bounty fund.*—For the purpose of providing for the payment of the aforesaid warrants there is hereby created a fund to be known as the state bounty fund, and in addition to the twenty-five per cent.* of all licenses now provided by law to be paid into the state treasury, by the respective county treasurers, there shall be paid into the said state treasury a further five per cent, of all said licenses, making a total of thirty per cent. thereof, payable into the state treasury, and seventy per cent. thereof to be retained by the respective counties collecting the same; and it is provided that the extra five per cent. of the said licenses thereby provided for to be paid into the state treasury shall, as received by the state treasurer from time to time, be covered into and passed by him to the credit of said state bounty fund, and the said treasurer shall

Note.—See Revised Codes, § 2756.

likewise cause to be deposited to the credit of said fund from time to time, as he shall receive the same, of all proceeds of the tax levy next herein provided for. [*Act approved Feby. 26, 1895.*]

State v. Camp Sing, 18 Mont. 129; 44 Pac. 516.

1910. (§ 3077.) *Application of surplus funds.*—If at the end of any fiscal year there shall be a surplus of said bounty fund, it shall be the duty of the state treasurer, and he is hereby authorized to apply such surplus on the payment of warrants on outstanding bounty certificates, on the order of the state board of examiners. [*Act approved Feby. 26, 1895.*]

1911. (§ 3078.) *Perjury. Forgery. Penalty.*—Any person who shall falsely make, alter, forge or counterfeit, any of said certificates or orders shall be deemed guilty of a forgery, and any person who shall swear falsely to any affidavit provided for by this act, or procure the same to be done by another, with the intent of obtaining any one of said certificates or orders, shall be deemed guilty of perjury, and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state's prison for a term of not less than one year nor more than ten years. [*Act approved Feby. 26, 1895.*]

In re Tergett, 34 Mont. 331. 86 Pac. 267. This section is not invalid because the penalties are not set forth in the title. The offense of forgery charged to have been committed by a county inspector or is committed by making the certificate,

when certain conditions precedent to its issuance, with the fulfillment of which he is charged, have not been performed. The crime of forgery herein charged is purely statutory.

1912. *Fraud. Penalty.*—Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other States or Territory, with intent to obtain the bounty on same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided, or shall evade any of the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same is collected, or can be collected, to be given to the informer, and the balance be covered into the State Bounty Fund. [*Act approved February 27th, 1899, § 5.*] (6th Sess. 102.)

In re Terrett, 34 Mont. 332; 86 Pac. 267.

1913. *Certificate of bounty claim; how made.*—That, hereafter, any applicant for bounty claimed for the killing of any stock destroying animal, under the laws of the state, shall, in his own hand writing, fill up all blanks in the affidavit by law

required to be made by such claimant of bounty, and, in stating in such affidavit the number of any kind of such animals upon which bounty is claimed, the said applicant shall state the number by writing the same in letters and, also, in parenthesis, in the figures; but, in the event that such applicant for bounty shall be unable to write, the blanks in such affidavit may be written and filled in for him by any other person, save and except the officer before whom such application for bounty is made. The person so writing for any bounty claimant, who is unable to write and fill in the blanks of his own affidavit, shall write his name below the name of the claimant upon such affidavit. [*Act approved March 5, 1907, § 1.*] (*10th Sess. Chap. 93.*)

1914. *Witness to bounty certificate.*—Any taxpayer upon livestock becoming a witness in support of any bounty claim shall, in his own hand writing, fill in all blanks in the affidavit to be by him subscribed, and at the same time, the number of the several animals whose hides are exhibited to the said witness at the time of applying for such bounty, and shall write such numbers in the said affidavit both in letters and figures; but, in the event that any such person acting as witness is unable to write, then such affidavit may be filled out in the manner prescribed in Section I of this Act. [*Act approved March 5, 1907, § 2.*] (*10th Sess. Chap. 93.*)

1915. *Erasures or obliteration of writing on bounty certificates.*—No officer shall hereafter, at any time, issue any bounty certificate or duplicate bounty certificate which has therein any erasure or obliteration of any ink writing upon the same, and the making upon the same, or any affidavit in support of any bounty certificate shall render such certificate null and void. [*Act approved March 5, 1907, § 3.*] (*10th Sess. Chap. 93.*)

1916. *Repeal. Construction.*—Article VIII., chapter V., of title VII., of part III. of the Political Code and all bounty laws, are hereby repealed, it being the purpose of this act that hereafter no bounty shall be paid upon any animals save those mentioned in § 1940 (3070) hereof. But nothing in this act shall be construed to affect the liability of the state or any county thereof for bounties earned in pursuance of existing laws. [*Act approved Feby. 26, 1895.*]

CHAPTER V.

REGULATIONS FOR THE PROTECTION OF THE INDUSTRY OF HORTICULTURE.

Section 1917. State Board of Horticulture. Creation of Board.

“ 1918. *Horticultural districts.*

“ 1919. *Members shall reside in district.*

Section 1920. Secretary.

- " 1921. *Meetings.*
- " 1922. *Office of Board.*
- " 1923. *Board may prescribe rules and regulations.*
- " 1924. *Inspectors.*
- " 1925. *Sellers to notify inspectors.*
- " 1926. *Penalty.*
- " 1927. *Duty to notify inspector.*
- " 1928. *Expenses a lien on property.*
- " 1929. *Delivery of goods without certificate.*
- " 1930. *Right to hold goods for certificate.*
- " 1931. *Compensation of Inspectors.*
- " 1932. *Expenses of Board, how paid.*
- " 1933. *Duties of Secretary.*
- " 1934. *Reports.*
- " 1935. *Disposition of fines.*
- " 1936. *Delivery of goods without certificate.*
- " 1937. *Selling or importing fruit trees without license prohibited.*
- " 1938. *License. Bond.*
- " 1939. *Inspector to be notified of shipment.*
- " 1940. *Labels.*
- " 1941. *Penalties.*
- " 1942. *Inspection of nursery stock.*
- " 1943. *Penalties.*
- " 1944. *Quarantine of orchards.*
- " 1945. *Penalty.*
- " 1946. *Expense of eradicating pests. Collection.*
- " 1947. *Duties of county treasurer.*

1917. State Board of Horticulture. Creation of Board.—

There is hereby created a State Board of Horticulture, to consist of eight members, seven of whom shall be appointed by the Governor, one from each of the horticultural districts that are hereby created, and the State Executive who shall be an ex-officio member of the Board. No person shall, however, be appointed on said Board, or employed by them, who shall be connected in any way, with any nursery, or who shall be engaged in the sale, or handling for profit, of any nursery stock. [*Act approved March 3, 1905, § 1.*] (*9th Sess. Chap. 83.*)

*1918. Horticultural districts.—*The State shall be divided into the following Horticultural districts: The first district shall comprise the counties of Dawson, Custer, Yellowstone, Sweet Grass, Carbon, Park and Rosebud. The second district shall comprise the counties of Gallatin, Madison, Jefferson, Beaverhead, Silver Bow, Lewis & Clark, Meagher and Broadwater. The third district shall comprise the counties of Cascade, Fergus, Valley, Chouteau and Teton. The fourth district shall com-

prise the counties of Missoula, Granite, Powell and Deer Lodge. The fifth district shall comprise the county of Ravalli. The Sixth district shall comprise the county of Flathead; and the seventh district shall comprise the county of Sanders. [*Act approved March 3, 1905.*] (9th Sess. Chap. 83.)

1919. *Members shall reside in district.*—The members shall reside in the district for which they are appointed. They shall be selected with reference to their study of, and practical experience in horticulture, and the industries dependent thereon. They shall hold office for a term of four years, and until their successors are appointed and qualified; *provided*, however, that two of the board first appointed—to be determined by lot—shall retire at the expiration of two years. All vacancies in the board shall be filled by appointment of the Governor and shall be for the unexpired term. [*Act approved February 17th, 1899, § 3.*] (6th Sess. 37.)

1920. *Secretary.*—The Board is authorized to employ a secretary, and prescribe his duties, who shall hold his appointment at the pleasure of the Board. Before entering upon the discharge of his duties, each member and employee of the Board shall take and subscribe to the oath of office, which said oath shall be filed with the Secretary of State. [*Act approved February 17th, 1899, § 4.*] (6th Sess. 37.)

1921. *Meetings.*—The Board may call together and hold, in conjunction with horticultural societies, public meetings of those interested in horticulture and kindred pursuits, and may publish such proceedings and discussions as in its judgment may seem proper provided the sum so expended shall not exceed the sum of \$300.00 per annum. The Board shall meet on the 3rd Monday of February and September of each year, and as much oftener as it may deem expedient. [*Act approved February 17th, 1899, § 5.*] (6th Sess. 37.)

1922. *Office of Board.*—The office of the Board shall be located at such a place as the majority thereof may determine, and shall be in charge of the secretary during the absence of the Board. [*Act approved February 17th, 1899, § 6.*] (6th Sess. 37.)

1923. *Board may prescribe rules and regulations.*—For the purpose of preventing the spread of contagious diseases among fruit and fruit-trees, and for the prevention, treatment, cure and extirpation of fruit pests, and diseases of fruit and fruit trees, and for the disinfection of grafts, scions and orchard debris, empty fruit boxes or packages, and other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, said Board may prescribe regulations for the inspection, disinfection or destruction thereof, which regulations shall be circulated in printed form, by the Board, among fruit growers

and fruit dealers of the State, and shall be published at least ten days in two horticultural papers, of general circulation in the State, and shall be posted in three conspicuous places in each County in the State, one of which shall be at the County Court House thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person, or persons, dealer or dealers, to allow, or cause to be used the second time any crate, box, barrel, package or wrapping once having contained fruit of nursery stock, and that the destruction of the same must be made in its entirety, and that the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this Act. Any member of the Board of officers thereof, is hereby authorized to seize and destroy by burning without breaking said crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators. [*Act approved March 6, 1903, § 3.*] (*8th Sess. Chap. 109.*)

1924. *Inspectors.*—The said Board shall elect from their own number, or appoint from without their number, to hold office at the pleasure of the Board, one competent person in each district, to be known and act as Inspector of fruit pests. Said inspectors shall be selected with reference to their study and practical experience in horticulture. It shall be the duty of said inspectors to visit the nurseries, orchards, stores, packing houses, warehouses and other places where horticultural products and fruits are kept and handled within their prospective districts, and to see that the regulations of the State Board of Horticulture to prevent the spread of fruit pests and diseases of trees and plants, and the disinfection of fruits, trees, plants, grafts, scions, orchard debris, and empty fruit boxes and other material shall be fully carried out and complied with. Said inspector shall have free access, at all times, to all premises where any trees, plants, fruits, or horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the State Horticultural Board, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies found to be infected with any disease as prescribed or designated by said Board. The said Board may appoint one or more as necessary, competent persons, to be known as Special Inspectors, whose general powers and duties shall be regulated and prescribed by the member of the Board for that district. Such Special Inspector shall receive such sum per day, as the said Board of Horticulture may agree upon, *provided* such sum shall in no case exceed the sum of five dollars per day, for the time actually employed. The said Board shall appoint one person to be known as Inspector at Large for the State,

whose duties shall be prescribed by the Board, and who shall receive the sum of five dollars per day for the time actually employed. [*Act approved March 6, 1903, § 4.*] (8th Sess. Chap. 109.)

1925. *Sellers to notify inspectors.*—It shall be the duty of every person or persons, corporation or corporations, who shall sell or deliver to any person, corporation or corporations, any trees, plants, vines, scions, or grafts, to notify the Secretary of the Board, whose duty it shall be to notify the Inspector of said district wherein such vines, etc., are to be delivered, at least five days before said goods are to be delivered, giving the date and nursery, or railroad station where said trees, plants, scions, etc., are to be delivered, together with the name of the party or parties who are to receive the same. It shall be the duty of the Inspector receiving said notice, to inspect the said trees, plants, grafts, scions, etc., as soon thereafter as practicable, and if the same be found free from any and all diseases or pests, as designated by said State Board of Horticulture, he shall so certify, and shall attach such certificate to each lot or bill of such trees, grafts, plants, scions, etc., which said certificate must contain a list of the said trees, grafts, scions, vines or plants so inspected. But if any of the trees, grafts, scions, vines, or plants so inspected, shall be found to be diseased or infected with any of the pests, as prescribed by the said Board, then the Inspector shall order the disinfection or destruction of such trees, grafts scions, vines, etc., so diseased or infected, together with all boxes, wrappings, or packing pertaining thereto, and charge and collect the sum of ten dollars (\$10) for the disinfection and inspection of each car load of such nursery stock, and a proportionate sum for less than car lots, but in no instance for less than two dollars (\$2.) for each separate inspection or disinfection; *provided*, that the State Board of Horticulture shall have power to designate certain places as quarantine stations, where all nursery stock brought in the State shall be inspected and disinfected. For the inspection of fruit trees, a fee of two cents per box or package, with a maximum fee of five dollars for each separate lot or car shall be charged and collected. The inspector shall collect such fees and shall not give certificates of inspection until the fees are paid. [*Act approved March 6, 1903, § 5.*] (8th Sess. Chap. 109.)

1926. *Penalty.*—If any person or persons in charge or control of any nursery, orchard, storeroom, packing house or other place where horticultural products or supplies are handled or kept, shall fail or refuse to comply with the rules and regulations of the State Board of Horticulture, or shall fail or refuse to disinfect or destroy any diseased or infected trees, plants, vines, scions, grafts, shrubs or other horticultural supplies or products, when ordered so to do, by the inspector of such district, he shall

be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$25.00 or more than \$300.00. [*Act approved February 17th, 1899, § 10.*] (6th Sess. 39.)

1927. *Duty to notify inspector.*—It shall be the duty of every owner or manager of every orchard, nursery, storeroom, packing house, or other place where horticultural products or supplies are kept or handled, which shall become diseased or infected with any injurious insect or pest, to immediately upon the discovery of the existence of such disease or pest to notify the inspector of said district of the existence of the same. It shall be the duty of such owner or manager, at his own proper expense to comply with and carry out all the instructions of said inspector for the eradication of said disease or pests. Any person who shall fail or refuse to notify said inspector, as herein provided, or who shall fail or refuse to comply with the instructions of said inspector for the eradication of any disease or pest, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than \$25.00, nor more than \$300.00. [*Act approved February 17th, 1899, § 11.*] (6th Sess. 39.)

1928. *Expenses a lien on property.*—If any person or persons, corporation or corporations shall fail or refuse to forthwith comply with the instructions of said inspector, for the eradication of any disease or pest, said inspector shall proceed forthwith to eradicate such disease or pest, and the expense of the same shall become a charge and a lien upon the property of such owner. [*Act approved February 17th, 1899, § 12.*] (6th Sess. 39.)

1929. *Delivery of goods without certificate.*—Every person who for himself or as agent for any other person or persons, corporation or corporations, transportation company or common carrier, shall deliver or turn over to any other person or persons, corporation or corporations, any trees, vines, shrubs, nursery stock, scions, grafts, without first having attached the inspector's certificate, as provided in Section 1926 (10) of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than \$25.00 nor more than \$300.00. [*Act approved February 17th, 1899, § 13.*] (6th Sess. 39-40.)

1930. *Right to hold goods for certificate.*—No person or persons, corporation or corporations, shall be liable to any other person or persons, corporation or corporations for any damage to any trees, vines or shrubs, nursery stock, scions or grafts, by reason of the same being held to await the certificate of the inspector, as provided in Section 1925 (9) of this Act. [*Act approved February 17th, 1899, § 14.*] (6th Sess. 40.)

1931. *Compensation of Inspectors.*—The Inspectors of fruit pests appointed or elected by said Board, shall receive as com-

pensation for their services such sum as the Board may regulate, *provided*, that said sum shall not exceed five dollars per day for the time actually employed. The members of said Board shall receive no compensation for their services except actual expenses paid out. The Secretary of said Board shall receive the sum of one thousand dollars (\$1,000.) per annum for his services. [*Act approved March 6, 1903, § 6.*] (8th Sess. Chap. 109.)

1932. *Expenses of board how paid.*—All bills for expenditures, under this Act, shall be audited and passed upon by the said Board of Horticulture, and if found legal and just, shall be allowed, subject to the approval of the State Board of Examiners, and a warrant shall be drawn therefor upon the State Auditor of the State of Montana, who shall draw his warrant upon the State Treasurer therefor. [*Act approved February 17th, 1899, § 16.*] (6th Sess. 40.)

1933. *Duties of Secretary.*—It shall be the duty of the Secretary to attend all meetings of the Board and to procure records of the proceedings and correspondence, to collect books, pamphlets, periodicals and other documents containing valuable information relating to horticulture, and to preserve the same; to collect statistics and other information showing the actual condition and progress of horticulture in this State and elsewhere; to correspond with agricultural and horticultural societies, colleges and schools of agriculture and horticulture and other persons and bodies as may be directed by the Board, and prepare as required by the Board, reports for publication; he shall also act as assistant to, and obey the directions of the inspectors of fruit pests, under the direction of the Board. [*Act approved February 17th, 1899, § 17.*] (6th Sess. 40.)

1934. *Reports.*—The Board shall biennially, in the month of January, report to the Legislature a statement of its doings and abstracts of the reports of the inspectors of fruit pests, and of the secretary. [*Act approved February 17th, 1899, § 18.*] (6th Sess. 41.)

1935. *Disposition of fines.*—All sums of money collected as fines for the violation of any of the provisions of this Act shall be turned into the State Treasury for use in defraying the expenses of the Board hereby created, and the appropriations hereby made shall be paid out of the said fund to the extent of the money therein contained. [*Act approved February 17th, 1899, § 20.*] (6th Sess. 41.)

1936. *Delivery of goods without certificate.*—Every person who for himself, or as agent for any other person or persons, transportation company or common carrier, shall deliver or turn over to any person or persons, corporation or corporations, any fruit trees without first having attached the inspector's certificate

shall be deemed guilty of a misdemeanor. [*Act approved March 6, 1903, § 8.*] (8th Sess. Chap. 109.)

1937. *Selling or importing fruit trees without license prohibited.*—No person, firm or corporation shall engage or continue in the business of selling within the State, or importing fruit trees, plants or nursery stock into the State, without first having obtained a license to do business in this State, as in this Act provided. [*Act approved March 6, 1903, § 22.*] (8th Sess. Chap. 109.)

1938. *License. Bond.*—Any person, firm or corporation, may obtain a license to engage in the business of selling fruit trees, plants or nursery stock into this State, upon the payment of the sum of twenty-five dollars, and by filing with the Secretary of the State Board of Horticulture, bond with sureties, in the sum of one thousand dollars (\$1,000.), conditioned that the principals will faithfully obey the laws of the State of Montana, and that the said principals will pay the cost of fumigation of all nursery stock or other materials or goods imported into or sold within the State by the said principals or his or their agent, and the expenses of destruction of any infested nursery stock. License granted under this Act shall be for one year, *Provided*, however, that such license may be revoked at any time for any violation of this Act, at the discretion of the Board. [*Act approved March 6, 1903, § 23.*] (8th Sess. Chap. 109.)

1939. *Inspector to be notified of shipment.*—It shall be the duty of every person, firm or corporation licensed to do business under this Act to notify the Secretary of the State Board of Horticulture of his intention to ship an invoice of fruit trees, plants or nursery stock, from one point to another in this State, or from any point without this State into this State. The said notice shall contain the name and address both of the consignor and consignee, and the invoice of the goods to be shipped, the freight or express office at which the goods are to be delivered, and the name or title of the transportation company from whom the consignee is to receive such goods. Such notice shall be mailed at least five days before the day of such shipment. [*Act approved March 6, 1903, § 24.*] (8th Sess. Chap. 109.)

1940. *Labels.*—It shall be the duty of each person or corporation offering to sell, or selling and delivering, any nursery stock, fruit trees, plants, vines, scions, cuttings, etc., within the State of Montana, to place on each and every package so sold and delivered, a label or card, containing the name and address of both the consignor and consignee, and the invoice of the stock therein contained. [*Act approved March 6, 1903, § 25.*] (8th Sess. Chap. 109.)

1941. *Penalties.*—Any person or persons who shall receive and accept any nursery stock, fruit trees, plants, vines, scions, cut-

tings, grafts, etc., that have not been inspected by a duly appointed inspector of the State Board of Horticulture, and shall use or dispose of said nursery stock, fruit trees, vines, plants, scions, cuttings, grafts, etc., without first notifying the inspector and furnishing him opportunity to examine, and if necessary fumigate the said nursery stock, will be deemed guilty of a misdemeanor and will be subject to a fine as further provided in this Act. [*Act approved March 6, 1903, § 26.*] (8th Sess. Chap. 109.)

1942. *Inspection of nursery stock.*—All nursery stock, trees, plants, vines and cuttings grown or growing within the State of Montana, used for filling orders shall, after said stock shall have been taken from the nursery rows or grounds, and before the same shall have been packed for delivery, be inspected by a duly appointed inspector and shall be disinfected by fumigating or other method, when in his judgment such is necessary. After such inspection, if it be found that said nursery stock, trees, plants, vines and cuttings, are clean and free from insects and fungi pests, he shall issue his certificate to said nurseryman, and said certificate shall entitle him to use said stock, so inspected and disinfected for filling orders for next current delivery. Nurseries shall give to the Secretary of the Board five day's notice of the time when said stock shall be ready for inspection under the provisions of this Act. [*Act approved March 6, 1903, § 27.*] (8th Sess. Chap. 109.)

1943. *Penalties.*—Any person or persons, corporation or corporations, transportation companies or common carriers, violating any of the provisions of this Act, shall be deemed guilty of a misdemeanor and fined in the sum of not less than twenty-five dollars (\$25.), nor more than three hundred dollars (\$300.) [*Act approved March 6, 1903, § 28.*] (8th Sess. Chap. 109.)

1944. *Quarantine of orchards.*—The Montana State Board of Horticulture is hereby authorized and empowered to establish a quarantine over any orchard, or place where fruits are grown or kept, that is infested with any injurious disease or insect pest; and said board may establish such rules and regulations governing such quarantine, and regulating or restricting the use of such fruits upon the premises, or the shipment or disposition of same, as the board may deem necessary to prevent the spreading of such disease or diseases, or insect pests. [*Act approved March 2, 1907, § 1.*] (10th Sess. Chap. 67.)

1945. *Penalty.*—Any person who shall violate the provisions of this Act, or the rules and regulations established by said Board of Horticulture, or who shall ship or dispose of any diseased or infested fruit, or fruit products, in violation of the order of said Board of Horticulture, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in the sum of not less

than twenty-five (\$25.00) dollars, nor more than three hundred (\$300.00) dollars. [*Act approved March 2, 1907, § 2.*] (*10th Sess. Chap. 67.*)

1946. *Expense of eradicating pests. Collection.*—Whenever, under the direction or regulations of the Montana State Board of Horticulture, any money is expended by said board for the purpose of eradicating any diseases or insect pest from any orchard, or other place where fruits are grown or kept, said board, through its representatives, shall notify the owner of such orchard or premises, in writing, of the amount so expended. Said notice shall be mailed to the last known address of such owner, and, if such owner shall fail to pay the amount so expended by said board within thirty days of the time such notice is sent, then, and in that event, the board shall file a statement, verified under oath by its representative, with the county treasurer in the county wherein said money shall have been expended. Said statement shall set forth the amount so expended, together with the correct description of the property on which such money was expended, as it appears on the assessment roll of the county. The county treasurer shall add the amount, as set forth in said statement, to the taxes upon said property, and shall collect the same as provided by law for the collection of taxes for state and county purposes. [*Act approved March 2, 1907, § 3.*] (*10th Sess. Chap. 67.*)

1947. *Duties of county treasurer.*—The county treasurer, in any county where any money is collected as provided in Section 1946 (3) of this Act, shall on or before the first day of February of each year remit the amount, previously collected, to the Secretary of the State Board of Horticulture, who shall remit the same to the state treasurer, and such remittances, together with all other fees and remittances paid into the state treasury by the State Board of Horticulture, shall be added to the appropriation for the use of the said board in the year in which such remittances are made, and all such remittances shall be credited to the fund for the use of the State Board of Horticulture. [*Act approved March 2, 1907, § 4.*] (*10th Sess. Chap. 67.*)

CHAPTER VI.

REGULATIONS FOR THE PROTECTION OF GAME AND FISH.

ARTICLE I. PENAL STATUTES.

II. GAME AND FISH WARDEN.

III. STATE FISH COMMISSION.

ARTICLE I.

PENAL STATUTE.

1948. (§ 3090.) *Penalties.*—The law relating to the protection of game and fish is provided in chapter I., title XV., part I., of the Penal Code.

ARTICLE II.

GAME AND FISH WARDEN.

- Section 1949. Governor to appoint game warden. Term.*
- “ 1950. *Bond of game warden.*
- “ 1951. *Duties of game warden.*
- “ 1952. *Governor may remove.*
- “ 1953. *May appoint deputies.*
- “ 1954. *Duties of deputies.*
- “ 1955. *Vacancy among deputies.*
- “ 1956. *Bond of deputy.*
- “ 1957. *Duty to investigate violations of law.*
- “ 1958. *Division of state into districts.*
- “ 1959. *Duties with reference to prosecutions.*
- “ 1960. *Report of prosecutions.*
- “ 1961. *Creation of game and fish districts.*
- “ 1962. *Special deputy game wardens not to engage in other occupations.*
- “ 1963. *Fish and game fund.*
- “ 1964. *Duty of state treasurer.*
- “ 1965. *Payment of claims.*
- “ 1966. *Compensation of clerk.*
- “ 1967. *Salary of state game and fish warden.*
- “ 1968. *Compensation of special deputies.*
- “ 1969. *Compensation and duties of deputies.*
- “ 1970. *Who are residents.*
- “ 1971. *Resident fishing license abolished.*
- “ 1972. *Non-resident fishing license.*
- “ 1973. *Blanks to be furnished by state auditor.*
- “ 1974. *Forestry officers to be considered residents.*
- “ 1975. *Deputy wardens to make weekly reports.*
- “ 1976. *Resident must take out license to hunt game, birds or animals.*
- “ 1977. *Application for hunting license; how made.*
- “ 1978. *Compensation for issuing license.*
- “ 1979. *Moneys collected to be paid into state treasury.*

1949. *Governor to appoint game warden. Term.*—That the Governor shall immediately after the passage of this act and every four years thereafter, appoint a state game and fish warden; he shall hold his office for a period of four years, or until removed as hereinafter provided. [Act approved March 18th, 1901, § 2.] (7th Sess. 130-1.)

1950. *Bond of game warden.*—Said state game and fish warden before entering upon the discharge of his duties shall give a bond to the state of Montana, in the sum of three thousand (\$3,000.00) dollars for the faithful performance of the duties of his office, which bond shall be approved by the Governor and

filed in the office of the Secretary of State. [*Act approved March 18th, 1901, § 3.*] (7th Sess. 131.)

1951. *Duties of game warden.*—The duties of said state game and fish warden shall be to examine into and inquire about any violation of the game and fish laws of this state, and to institute prosecutions for any violation of the law and he is vested throughout the state with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of the state. He shall have general supervision over all deputy game and fish wardens and all special deputy game and fish wardens hereinafter provided for; and he is hereby authorized to appoint such deputies. [*Act approved March 18th, 1901, § 4.*] (7th Sess. 131.)

1952. *Governor may remove.*—That said State game and fish warden may at any time be removed at the will of the Governor and at any time a vacancy for any reason occurs in said office, the Governor of the State of Montana is hereby authorized and directed to make an appointment to fill said vacancy. [*Act approved March 18th, 1901, § 5.*] (7th Sess. 131.)

1953. *May appoint deputies.*—Each State game and fish warden immediately after his appointment and every four years thereafter, is hereby authorized and empowered to appoint not less than five (5) nor more than eight (8) special deputy game and fish wardens, as the needs of the State may require. Their term of office shall be for a period of four years, but any of said special deputy game and fish wardens so appointed by said State game and fish warden, may at any time be removed at the will of said State game and fish warden. [*Act approved March 18th, 1901, § 8.*] (7th Sess. 131-2.)

1954. *Duties of deputies.*—That each of such deputies appointed as aforesaid shall perform the following duties: To examine into and inquire about any violation of the game and fish laws of this State and to institute prosecutions for any violations of said law, and make report at the end of each month to the State game and fish warden of all arrests and prosecutions made by said deputy, and furnish such other information which he may have that will tend to promote the enforcement of the game and fish laws; and he is vested throughout the State with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of this State. [*Act approved March 18th, 1901, § 7.*] (7th Sess. 131.)

1955. *Vacancy among deputies.*—That whenever a vacancy occurs by the death or removal of a special deputy game and fish warden, or for any other cause, the State game and fish warden is hereby authorized to fill said vacancy by appointment, if in his judgment it is to the best interests of the State to fill said vacancy. [*Act approved March 18th, 1901, § 9.*] (7th Sess. 132.)

1956. *Bond of deputy.*—Each of the special deputy game and fish wardens hereby provided for, shall before entering upon the discharge of their duties give a bond to the state of Montana in the sum of One Thousand (\$1000.00) Dollars for the faithful performance of the duties of his office, which bond shall be approved by the Governor and filed in the office of the Secretary of State. [Act approved March 18th, 1901, § 10.] (7th Sess. 132.)

1957. *Duty to investigate violations of law.*—The duties of said special deputy game and fish wardens shall be to inquire about any violations of the game and fish laws of the State of Montana and to institute prosecutions for any violation of said law, and report in detail to said State game and fish warden at the end of each month, where they were each day of said month and the inquiries and efforts by them made to enforce the game and fish laws; and each is vested throughout the State with all the powers of a sheriff in making arrests and in the prosecution of all offenses against the game and fish laws of said State. [Act approved March 18th, 1901, § 11.] (7th Sess. 132.)

1958. *Division of state into districts.*—The State game and fish warden may divide the State from time to time into such fish districts, as to him may seem best and designate a special deputy game and fish warden to take charge of said district and perform the duties of special deputy game and fish warden therein. The State game and fish warden may however when he deems it necessary for the better enforcement of the game and fish laws, send any of said special deputies from the district so assigned to them to perform services in another part of the State, and when such special deputy game and fish warden is so sent from his district to perform duties in any other part of the State he shall receive pay for actual and necessary expenses incurred by him while traveling outside of his district in performance of duty under the direction of said State Game and Fish Warden. [Act approved March 18th, 1901, § 13.] (7th Sess. 132-133.)

1959. *Duties with reference to prosecution.*—The State game and fish warden, the deputy game and fish wardens, and the special deputy game and fish wardens may make complaints and cause proceedings to be commenced against any person for violation of any of the laws for the protection or propagation of game and fish and in such case he shall not be obliged to furnish security for costs. Any of said wardens shall have power to search any person and examine any boat, conveyance, vehicle, fish box, fish basket, game bag, or game coat, or any other receptical for game or fish when he has good reasons to believe that he will thereby secure evidence of the violation of the law. Any of said wardens shall at any and all times seize and take possession of any and all birds, animals or fish which have been caught, taken or killed at any time, in a manner or for a purpose or had in pos-

session or under control or had been shipped contrary to any laws of the State, and such seizure may be made without a warrant. Any court having jurisdiction of the offense upon receiving proof of probable cause for believing in the concealment of any bird, animal or fish caught, taken, or killed, had in possession, under control, or shipped contrary to any of the laws of this State shall issue a search warrant and cause a search to be made in any place, and to that end may cause any building, enclosure, or car to be entered, and any apartment, chest, box, locker, crate, basket, or package to be broken open and the contents thereof examined by the game and fish warden, or any deputy game and fish warden, or any special deputy game and fish warden, or any sheriff, deputy sheriff or constable. All birds, animals or fish seized by any officer, as herein provided shall be sold by said officer at a time and in a manner so as to receive the highest price therefor, and shall issue a certificate to the party purchasing the same certifying that the same was legally obtained and possessed, and any one so acquiring the same within this State shall have the right to deal therewith the same as if it had been killed and was possessed in accordance with the laws of this State, anything herein to the contrary notwithstanding and shall pay the money to the court before whom the person having the same in possession at the time of such seizure shall be prosecuted, and of the person from whom said birds, animals and fish were taken, is found guilty before said court of any violation of the fish and game laws of this State, said money shall be paid to the State Treasurer, and by him deposited into the fish and game fund, but should it be found that the party from whom the same was taken is not guilty of any violation of the game and fish laws of this State, said money shall be paid to the party from whom said birds, animals or fish were taken. No officer shall be liable for any damages on account of any search, examination, seizure or sale as herein provided for. [*Act approved March 18th, 1901, § 16.*] (7th Sess. 133-4.)

1960. *Report of prosecutions.*—The State game and fish warden shall make a semi-annual report to the Governor of all prosecutions instituted by himself and the different deputies during the six months prior to said report, and shall state in said report any and all information he may have obtained in regard to the condition of game and fish in the State of Montana, together with any information that may aid in protecting the fish and game of said state in the future. [*Act approved March 18th, 1901, § 18.*] (7th Sess. 134-5.)

1961. *Creation of game and fish districts.*—The State Game and Fish Warden is hereby authorized and empowered to create four additional game and fish districts and to appoint and employ four additional Special Deputy Game and Fish Wardens

whose duties and compensation shall be the same as is already provided for in House Bill No. 147, Session Laws 1901 (*Ante* § 1959) ; such appointments may be made by the State Game and Fish Warden at any time as in his judgment the needs of the State may require. [*Act approved March 7, 1907, § 9.*] (*10th Sess. Chap. 142.*)

1962. *Special deputy game wardens not to engage in other occupations.*—No Special Deputy State Game and Fish Warden while holding such appointment or serving in such capacity shall engage actively in any other business, trade or profession, or perform any other duties other than those required for the proper fulfillment of his office. [*Act approved March 7, 1907, § 10.*] (*10th Sess. Chap. 142.*)

1963. *Fish and game fund.*—There is hereby created a fund to be known as the Fish and Game fund ; and all fines and licenses and other moneys collected under any of the provisions of the Game and Fish laws shall be paid to the State Treasurer and by him placed in the Fish and Game Fund. [*Act approved February 28th, 1903, § 3.*] (*8th Sess. Chap. 38.*)

1964. *Duty of state treasurer.*—The State Treasurer is hereby directed to keep all moneys now in the Fish and Game Fund and all moneys placed hereafter in such fund for the payment only of the salaries and other expenses incurred by the Game and Fish Warden's Department. [*Act March 2, 1905, § 13.*] (*9th Sess. Chap. 57.*)

1965. *Payment of claims.*—No warrant shall be issued for the amount to be paid to the State Game and Fish Warden, or any of the special deputy game and fish wardens appointed by him, by the Auditor of the State, until itemized accounts, properly verified, shall be presented by the person to whom the warrant is to be issued or until the same is certified to as correct by the Governor of the State. Upon the presentation of said accounts, duly verified and certified, as above, the State Auditor shall draw a warrant on the fish and game fund on the State Treasurer, in favor of the party or parties entitled thereto, for the amount so certified, and the same shall be paid out of said fund. [*Act approved March 18th, 1901, § 17.*] (*7th Sess. 134.*)

1966. *Compensation of clerk.*—The compensation of the clerk in the office of the State Game and Fish Warden shall hereafter be at the rate of twelve hundred (\$1200.00) dollars per annum, payable in monthly installments at the end of each month. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 139.*)

1967. *Salary of state game and fish warden.*—The compensation of the State Game and Fish Warden shall hereafter be at the rate of twenty-four hundred (\$2400.00) dollars per annum, payable in monthly installments at the end of each month. He shall be paid for all actual and necessary expenses attached to his

office, but such expenses shall not exceed two thousand (\$2000.00) dollars per annum. [*Act approved March 7, 1907, § 1.*] (10th Sess. Chap. 139.)

1968. *Compensation of special deputies.*—The compensation of all special deputy game and fish wardens shall hereafter be at the rate of fifteen hundred (\$1500.00) dollars per annum, payable in monthly installments at the end of each month. Each special deputy game and fish warden shall be allowed three hundred (\$300.00) dollars per annum, or as much thereof as may be necessary for his actual and necessary traveling expenses in his own district, when actually engaged in discharging the duties of his office, to be paid out of the game and fish fund upon vouchers duly audited by the State Board of Examiners. [*Act approved March 7, 1907, § 2.*] (10th Sess. Chap. 139.)

1969. *Compensation and duties of deputies.*—The special deputy game and fish wardens appointed by the state game and fish warden shall receive as compensation for their services, pay at the rate of Twelve Hundred (\$1200.00) Dollars per annum, which shall be in full for their services and expenses incurred in their own districts, the same to be made in monthly payments at the end of each month; *provided*, that in any case where it shall become necessary in the performance of his official duties for the state game and fish warden or any special deputy game and fish warden appointed under the provisions of this act, to perform any service such as might be performed by a sheriff or other peace officer, he shall be entitled to receive for his own use and benefit the same fees and five cents per mile travelled in the performance of his duties, within his own district as if such service were performed by the sheriff of the county in which the service is performed, such fees and mileage to be paid out of the State Fish and Game Fund when approved by the State Board of Examiners. [*Act approved February 28th, 1903, § 2.*] (8th Sess. Chap. 38.)

1970. *Who are residents.*—To be a bona fide resident under and within the meaning of this Act, a person must have resided in this State for the six months last past, when applying for his license; *provided, however*, that all soldiers of the United States Army stationed at any post or fort in Montana shall come under and within the provisions of this Section. [*Act March 2, 1905, § 7.*] (9th Sess. Chap. 57.)

1971. *Resident fishing license abolished.*—From and after the passage of this Act it shall not be required of any bona fide resident of the State of Montana, under and within the provisions of Section 7, Substitute for House Bill No. 120, Session Laws, 1905 (*Ante* § 1970), to procure a fishing license, but said resident of this State may take fish from any of the streams or

waters in this state without first procuring a license. [*Act approved March 7, 1907, § 1.*] (*10th Sess. Chap. 142.*)

1972. *Non-resident fishing license.*—There is hereby created a non-resident's fishing license. Every person who is not a bona fide resident of the State of Montana under and within the meaning of Section 7, Substitute for House Bill No. 120, Session Laws 1905 (*Ante § 1970*), who desires to fish in this State must first obtain a license therefor from the State Game and Fish Warden or Deputy State Game and Fish Warden or Justice of the Peace. Said license shall contain the same description and be printed in the same form as the limited non-residents license and shall grant the holder permission to fish only and shall cost the sum of one dollar and shall expire on December 31st, of the year issued; the same conditions that govern the issuance of other non-resident licenses shall apply in this case. The State Game and Fish Warden shall furnish all Justices of the Peace with these license blanks and the Justices are hereby allowed the same commission for issuing these licenses as for resident licenses. [*Act approved March 7, 1907, § 2.*] (*10th Sess. Chap. 142.*)

1973. *Blanks to be furnished by state auditor.*—From and after the passage of this Act all blank hunting and fishing licenses or license blanks shall be delivered by the State printer to the State Auditor. The State Auditor shall turn over to the State Game and Fish Warden, upon his demand, such blank hunting and fishing licenses as are required and shall take a receipt from said State Game and Fish Warden for all such licenses delivered to him. The State Auditor shall also sign such license blanks with the State Game and Fish Warden and the same shall be countersigned by the party issuing the licenses. The State Auditor shall charge the State Game and Fish Warden with all licenses delivered to him and shall credit said State Game and Fish Warden with all spoiled and unused licenses returned by him at the end of each calendar year and he shall issue to the State Game and Fish Warden a receipt therefor. The State Game and Fish Warden is hereby held responsible for any and all licenses delivered to him by the State Auditor. [*Act approved March 7, 1907, § 3.*] (*10th Sess. Chap. 142.*)

1974. *Forestry officers to be considered residents.*—All forestry officers in the employ of the forestry service of the United States shall be considered bona fide residents of the State of Montana, under and within the meaning of Section 7, Substitute for House Bill No. 120, Session Laws 1905 (*Ante § 1970*), and shall be entitled to a resident's license. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 142.*)

1975. *Deputy wardens to make weekly reports.*—All Special Deputy State Game and Fish Wardens shall make out each day a report of all matters attended to and business transacted on

said day and at the end of each week shall forward such report to the State Game and Fish Warden. [Act approved March 7, 1907, § 5.] (10th Sess. Chap. 142.)

1976. *Resident must take out license to hunt game, birds or animals.*—Every person who is a bona fide resident of the State of Montana, under and within the provisions of Section 7, Substitute for House Bill No. 120, Session Laws 1905 (*Ante* § 1970), who desires to hunt, take, kill, or catch any of the game animals or game birds of this State must first obtain a license therefor. [Act approved March 7, 1907, § 6.] (10th Sess. Chap. 142.)

1977. *Application for hunting license; how made.*—Any bona fide resident of this state who desires to secure a resident hunting license without appearing personally before a party issuing the same as provided by law, may secure the same by making a written application to any person within his own county issuing such licenses, and by filling out the proper blank mailed to him by the party issuing such licenses and accompanying the same with the price of said license. Any person issuing a resident hunting license shall upon a written request from any resident of the County in which he is issuing such licenses, mail to such applicant an application blank which is furnished by the State Game and Fish Warden, and upon the receipt of such blank properly filled out and accompanied by the cost of said license, mail to the applicant a resident's hunting license. If the party issuing such license is acquainted with the applicant personally, then he may issue such license upon the receipt of the application blank properly filled out and signed by the applicant only, but should such party not be personally acquainted with the applicant, then he shall demand that two taxpayers of his county sign such application blank, certifying that the applicant is a bona fide resident of the State of Montana and of his county under and within the provisions of Substitute for House Bill No. 120, Session Laws of 1905 (*Ante* § 1970). The party issuing the license shall forward such application blank to the State Game and Fish Warden attached to the duplicate license the original of which has been sent to the applicant, at a time and in the same manner as other duplicate licenses are sent to the State Game and Fish Warden. A license cannot be issued by application to a person living in another county. The State Game and Fish Warden is hereby directed to furnish all persons issuing resident hunting licenses with these application blanks at the same time that licenses are sent out each year. Such blanks shall contain the same description as required on the hunting license and be in the proper form for the applicant to certify that he is a bona fide resident of the State of Montana, under and within the meaning of Section 7 of the Substitute for House Bill No. 120, Session Laws 1905 (*Ante* § 1970), and a resident of the

county in which he is applying for such license; said application blank shall also provide for the certification of the same by two resident taxpayers of the county whenever such is necessary. Any person who shall falsely certify to any hunting license or application for the same is guilty of a misdemeanor and is punishable as such. [Act approved March 7, 1907, § 7.] (10th Sess. Chap. 142.)

1978. *Compensation for issuing license.*—All persons issuing hunting and fishing licenses shall be entitled to receive as their compensation 10% of the amount of their sales and said commission shall include all costs of postage and other expenses attendant to the discharge of this duty. [Act approved March 7, 1907, § 8.] (10th Sess. Chap. 142.)

1979. *Moneys collected to be paid into state treasury.*—All money received by the State Game and Fish Warden for the foregoing licenses shall be paid by him to the State Treasurer and by him placed to the credit of the Fish and Game Fund. [Act approved February 18th, 1901, § 24.] (7th Sess. 137.)

ARTICLE III.

STATE FISH COMMISSION.

Section 1980. Creation of state fish commission.

" 1981. *Compensation of commissioners.*

" 1982. *Organization of board.*

" 1983. *State fish hatchery.*

" 1984. *Construction of state fish hatchery.*

" 1985. *Equipment of state fish hatchery.*

" 1986. *Director of state fish hatchery.*

" 1987. *Payment of expenses.*

1980. *Creation of state fish commission.*—There is hereby created a commission to be known as the Montana State Fish Commission. Said Commission shall be composed of two members to be appointed by the Governor, and the State Game Warden, who shall be a member ex-officio. Said members, appointed by the Governor, shall hold office for a term of four years, or until their successors have been appointed and have qualified, except that one of the two members first appointed, shall hold office for two years, and in making said first appointment, the Governor shall designate the length of the term for which each one is appointed. [Act approved March 8, 1907, § 1.] (10th Sess. Chap. 176.)

1981. *Compensation of commissioners.*—Said Commission shall qualify in the same manner as members of other State Boards, and such Commissioners shall receive no compensation, except actual and necessary expenses while engaged in the dis-

1977a. *Non-Resident Hunting and Fishing License*.—Every person who is not a bona fide resident of this State, and who desires to hunt, take, kill, catch or have in his possession any of the game animals, game birds, or fish of this State, must first obtain a license therefor of the State Game and Fish Warden or a Deputy Game and Fish Warden. Said license shall certify that the licensee is a non-resident of this State, and shall contain a complete description of the licensee, together with his age, business, residence, and postoffice address, and shall grant to him permission to hunt, take, kill, catch or have in his possession, any game animals, game birds or fish of this State at a time and in a manner not prohibited by law. Every applicant for such license shall, upon applying for the same, state his occupation, residence and postoffice address, and shall place his signature in ink upon such license in a place designated by the officer issuing the same, which signature must be made in the presence of such officer. The applicant shall pay the State Game and Fish Warden or Deputy issuing the license, the sum of Twenty-five (\$25.00) Dollars for a "General License", which shall entitle the holder to hunt large or big game, small and feathered game, and to fish; or the sum of Ten (\$10.00) Dollars for a "Limited License", which shall entitle the holder only to hunt small and feathered game and to fish. Any non-resident of this State who shall hunt, take, kill, catch, or have in his possession, any of the game animals, game birds or fish of this State, or any part thereof, without having taken out and being at the time in possession of a non-resident's license as provided for in this Act, and in the case of large or big game, being entitled by virtue of the same to hunt for large or big game, shall be punished by a fine of not less than Fifty Dollars or more than Five Hundred Dollars, or by imprisonment in the county jail not less than one month or in the state prison more than one year, or by both such fine and imprisonment. [*Act passed March 2, 1905, § 6.*] (9th Sess. Chap. 57.)

1987. *Payment of expenses*.—All expenses of the State Board of Fish Commissioners shall be approved by the State Board of Examiners, before being paid by the State Treasurer, save and except the salary of the director of said Hatchery, which shall

charge of their official duties. [*Act approved March 8, 1907, § 2.*] (*10th Sess. Chap. 176.*)

1982. *Organization of board.*—Said Board shall elect one of their members, as chairman, and one member as secretary, and they shall sign all orders, minutes or documents for the Board. They shall keep a correct record of all business transacted, and shall make a report biennially to the Governor and Legislative Assembly. [*Act approved March 8, 1907, § 3.*] (*10th Sess. Chap. 176.*)

1983. *State fish hatchery.*—The Montana State Board and Fish Commissioners are hereby authorized and directed to secure the construction and equipment of a State Fish Hatchery. Said Board shall locate said Hatchery at some suitable point within the state, *provided, however*, that the citizens or county wherein said hatchery is located shall donate to the state and give in fee simple, a suitable site including water for the perpetual use of said Hatchery. [*Act approved March 8, 1907, § 4.*] (*10th Sess. Chap. 176.*)

1984. *Construction of state fish hatchery.*—Said State Board of Fish Commissioners shall secure suitable plans and specifications for said Fish Hatchery, and shall proceed to construct the same by contract. Notice of the letting of such contract shall be duly published, and the party to whom such contract is awarded shall be required to give a suitable bond for the faithful performance and completion of the contract. [*Act approved March 8, 1907, § 5.*] (*10th Sess. Chap. 176.*)

1985. *Equipment of state fish hatchery.*—Said Board shall furnish and equip said Hatchery, in a suitable manner, and shall have full control over the management of the same. The product of said Hatchery shall be used exclusively for free distribution under the direction of said Board, for stocking the streams of this state. [*Act approved March 8, 1907, § 6.*] (*10th Sess. Chap. 176.*)

1986. *Director of state fish hatchery.*—The said State Board of Fish Commissioners shall employ a director to manage and operate said Hatchery, who shall reside at or near said Hatchery, and whose salary shall not exceed the sum of Fifteen Hundred (\$1500.00) dollars per annum. The said Board shall also have power to employ other help in the operation of said hatchery, or the distribution of the product therefrom, *provided* that expenditures for such purposes shall not exceed the sum of Fifteen Hundred (\$1500.00) dollars per annum. [*Act approved March 8, 1907, § 7.*] (*10th Sess. Chap. 176.*)

1987. *Payment of expenses.*—All expenses of the State Board of Fish Commissioners shall be approved by the State Board of Examiners, before being paid by the State Treasurer, save and except the salary of the director of said Hatchery, which shall

be paid without such approval. [Act approved March 8, 1907, § 9.] (10th Sess. Chap. 176.)

CHAPTER VII.

CEMETERIES AND SEPULTURE.

- Section 1988. Title to cemetery grounds.*
 “ 1989. *What constitutes a cemetery.*
 “ 1990. *Cemeteries, how laid out and dedicated on public lands.*
 “ 1991. *Inhabitants of city, town or village to own cemetery.*
 “ 1992. *Public cemetery, under whose control.*
 “ 1993. *Who exercises jurisdiction and control over.*
 “ 1994. *Registry must be kept.*
 “ 1995. *Penalties.*

1988. (§ 2880.) *Title to cemetery grounds.*—The title to lands used as a public cemetery or graveyard, situated in or near to any city, town or village, and used by the inhabitants thereof continuously, without interruption, as a burial ground for five years, is vested in the inhabitants of such city, town or village, and the lands must not be used for any other purpose than a public cemetery, except that the bodies interred therein may be removed and no other interred therein, upon the order of the board of county commissioners, city council or other body having authority, when it appears that the public health is endangered or for any other good cause, but a new cemetery must be purchased and laid out by proper authority and such bodies removed and interred therein, and the old cemetery may be sold and the proceeds applied to the purchase of the new cemetery.

1989. (§ 2881.) *What constitutes a cemetery.*—Six or more human bodies buried at one place constitutes the place a cemetery.

Stockton v. Weber, 98 Cal. 438; 33 Pac. 332.

1990. (§ 2882.) *Cemeteries, how laid out and dedicated on public lands.*—Incorporated cities or towns, and for unincorporated towns or villages, the board of county commissioners of the county, may survey, lay out and dedicate of the public lands situated in or near such city, town or village, not exceeding five acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same a cemetery, must be recorded in the office of the county clerk of the county in which the same is located.

1991. (§ 2883.) *Inhabitants of city, town or village to own cemetery.*—The inhabitants of any city, town, village, or neighborhood, may, by subscription, or otherwise, purchase or receive by gift or donation, lands not exceeding one hundred and sixty acres to be used as a cemetery, the title thereof to be vested in such inhabitants, and when once dedicated for use for burial purposes,

must thereafter be used for no other purpose, except as provided in § 1988 (2880.)

1992. (§ 2884.) *Public cemetery, under whose control.*—The public cemeteries of cities, towns, villages, or neighborhoods, must be inclosed and laid off into lots, and the general management, conduct and regulation of interments, permits to inter, or remove interred bodies, the disposition of lots, keeping the same in order, are under the jurisdiction and control of the cities and towns owning the same, if incorporated; if not, then under the jurisdiction and control of the board of county commissioners of the county in which they are situated.

1993. (§ 2885.) *Who exercises jurisdiction and control over.*—The board of county commissioners, city trustees, or other corresponding authorities having jurisdiction and control of cemeteries, may make general rules and regulations therefor, and appoint sextons and other officers to enforce obedience to the same, with such other powers and duties regarding the cemetery as they may deem necessary, including the right by taxation to raise money, purchase land, lay out cemeteries and manage them.

1994. (§ 2886.) *Registry must be kept.*—The authority having the control of a public or private cemetery must require a registry of name, age, birthplace, and date of death and burial of every body interred therein, to be kept by the sexton or other officer, open to public inspection.

1995. (§ 2887.) *Penalties.*—Any person on whom any duty is imposed by chapters I,* III. (II) and VII. (III), of this title who fails, neglects, or refuses to perform the same as therein required, is liable to a penalty of fifty dollars, to be recovered by the county attorney of the county, and when recovered must be paid into the general fund of the county.

* Note.—This chapter has been repealed.

CHAPTER VIII.

LOST AND UNCLAIMED PROPERTY.

ARTICLE I. LOST MONEY AND GOODS.

II. UNCLAIMED PROPERTY.

ARTICLE I.

LOST MONEY AND GOODS.

Section 1996. *Duty of person finding lost money, goods, etc.*

“ 1997. *Justice to appoint appraisers; duty of appraisers.*

“ 1998. *Justice to file list of appraisers.*

“ 1999. *Proceedings if no owner appears within six months.*

Section 2000. Finder to restore property, when.

“ 2001. *Finder failing to make discovery, penalty.*

“ 2002. *Proof, how made.*

1996. (§ 2900.) *Duty of person finding lost money, goods, etc.*—If any person find any money, goods, things in action, or other personal property, or save any domestic animal from drowning or from starvation, when such property is of the value of ten dollars or more, he must inform the owner thereof, if known, and make restitution without compensation further than a reasonable charge for saving and taking care thereof; but if the owner is not known to the party saving or finding such property, he must, within five days, make an affidavit before some justice of the peace of the county, stating when and where he found or saved such property, particularly describing it, and if the property was saved, particularly from what and how he saved the same, stating therein whether the owner of the property is known to him, and that he has not secreted, withheld, or disposed of any part of such property.

1997. (§ 2901.) *Justice to appoint appraisers; duty of appraisers.*—The justice must then summon three disinterested householders to appraise the same. The appraisers, or any two of them, must make two lists of the valuation and description of such property, and sign and make oath to the same, and deliver one of the lists to the finder, and the other to the justice of the peace.

1998. (§ 2902.) *Justice to file list of appraisers.*—The justice must file such list and the finder must transmit a copy of the same to the county clerk of the county, who must record the same in a book known as the “Estray and Lost Property Book,” within fifteen days, and the finder must at once set up at the court house door and four other public places in the township or city a copy of such valuation and a description of property.

1999. (§ 2903.) *Proceedings if no owner appears within six months.*—If no owner appears and proves the property, within six months, and the value thereof does not exceed twenty dollars, the same vests in the finder, but if the value exceeds twenty dollars the finder must within thirty days after setting up the list mentioned in the preceding section cause a copy of the description to be inserted in some newspaper printed in the county, if there be one, and if not, in some newspaper printed in the state, for three weeks and if no owner prove the property within one year after such publication it vests in finder.

2000. (§ 2904.) *Finder to restore property, when.*—If, within one year, an owner appears and proves the property and pays all reasonable charges, including fees of officers, the finder must restore the same to him. On failure to make restoration of such

property, or the appraised value thereof, on being tendered such charges and fees, the owner may recover the same or the value thereof by civil action in any court having jurisdiction.

2001. (§ 2905.) *Finder failing to make discovery, penalty.*—If any person find any money, property or other valuable thing, and fail to make discovery of the same as required by this article, he forfeits to the owner double the value thereof.

2002. (§ 2906.) *Proof, how made.*—The proof required by this article must be made before the county clerk, with whom the list provided for herein is filed, and if he is satisfied therefrom that the person claiming to be, is the owner, he must certify that fact under his hand and seal.

ARTICLE II.

UNCLAIMED PROPERTY.

Section 2003. Common carriers may retain goods until charges are paid.

“ 2004. *Property unclaimed within sixty days to be sold, how.*

“ 2005. *Proceeds unclaimed, where to go.*

“ 2006. *Carrier's responsibility ceases, when.*

“ 2007. *Property upon which advances are due, may be sold, when.*

“ 2008. *Fees of officers.*

2003. (§ 2920.) *Common carriers may retain goods until charges are paid.*—When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchants, or warehousemen, for transportation or safe keeping, and are not delivered to the owner, consignee, or other authorized person, the carrier, commission merchant, or warehouseman, may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

2004. (§ 2921.) *Property unclaimed within sixty days to be sold, how.*—If no person calls for the property within ninety days from the receipt thereof, and pays freight and charges thereon, the carrier, commission merchant, or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days' notice of the time and place of sale to the owner, consignee or consignor, when known, and by advertisement in a daily paper ten days (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising, and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

2005. (§ 2922.) *Proceeds unclaimed, where to go.*—If the owner or his agent fails to demand such surplus within sixty days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

2006. (§ 2923.) *Carrier's responsibility ceases, when.*—After the storage of goods, merchandise or property, as herein provided, the responsibility of the carrier ceases, nor is the person with whom the same is stored liable for any loss or damage on account thereof, unless the same results from his negligence or want of proper care.

2007. (§ 2924.) *Property upon which advances are due, may be sold when.*—When any commission merchant or warehouseman receives on consignment, produce, merchandise or other property, and makes advances thereon, either to the owner, or for freight and charges, he may, if the same is not paid to him within ninety days from the date of such advances, cause the produce, merchandise or property, on which the advances were made, to be advertised and sold as provided herein.

2008. (§ 2925.) *Fees of officers.*—The fees of officers under this chapter are the same as allowed for similar services in other cases provided in this code, to be paid by the taker up or finder, and recovered of the owner.

CHAPTER IX.

STANDARD WEIGHTS AND MEASURES.

Section 2009. *What are standards.*

" 2010. *Unit of extension.*

" 2011. *Unit of yard.*

" 2012. *Rod, mile and chain.*

" 2013. *Acre.*

" 2014. *Unit of weights.*

" 2015. *Division of a pound.*

" 2016. *Unit of liquid measure.*

" 2017. *Barrel and hogshead.*

" 2018. *Unit of solid measure.*

" 2019. *Unit of half bushel.*

" 2020. *Division of capacity for commodities sold by heap measure.*

" 2021. *Heap measure.*

" 2022. *Contracts construed.*

" 2023. *Standard ton and bushel.*

" 2024. *Measurement of hay in stack.*

" 2025. *Weights and measures inspected by county sealer.*

" 2026. *Penalties.*

2009. (§ 3120.) *What are standards.*—The weights and measures accepted and used by the government of the United

States at the present time, except as hereinafter provided, are the lawful standard weights and measures of the state.

2010. (§ 3121.) *Unit of extension.*—The standard yard is the unit or standard measure of length and surface from which all other measures of extension, whether lineal, superficial or solid, are derived and ascertained.

2011. (§ 3122.) *Unit of yard.*—The yard is divided into three equal parts, called feet, and each foot into twelve equal parts, called inches; for measures of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eights, and sixteenths.

2012. (§ 3123.) *Rod, mile and chain.*—The rod, pole, or perch, contains five and a half yards, and the mile one thousand seven hundred and sixty yards; the chain for measuring land is twenty-two yards long, and divided into one hundred equal parts, called links.

2013. (§ 3124.) *Acre.*—The acre for land measure must be measured horizontally, and contains ten square chains, and is equivalent in area to a rectangle sixteen rods in length and ten in breadth; six hundred and forty acres being contained in a square mile.

2014. (§ 3125.) *Unit of weights.*—The standard avoirdupois and troy weights are the units of standards of weight from which all other weights are derived and ascertained.

2015. (§ 3126.) *Division of a pound.*—The avoirdupois pound, which bears to the troy pound the ratio of seven thousand to five thousand seven hundred and sixty, is divided into sixteen equal parts, called ounces; the hundred weight consists of one hundred avoirdupois pounds, and twenty hundred weight constitute a ton. The troy ounce is equal to the twelfth part of the troy pound.

Higgins v. California Co., 120 Cal. 630; 52 Pac. 1080.

2016. (§ 3127.) *Unit of liquid measure.*—The standard gallon and its parts are the units or standards of measure of capacity for liquids, from which all other measures of liquids are derived and ascertained.

2017. (§ 3128.) *Barrel and hogshead.*—The barrel is equal to thirty-one and a half gallons, and two barrels constitute a hogshead.

2018. (§ 3129.) *Unit of solid measure.*—The standard half bushel is the unit or standard measure of capacity for substances other than liquids, from which all other measures of such substances are derived and ascertained.

2019. (§ 3130.) *Unit of half bushel.*—The peck, half peck, quarter peck, quart and pint measures for measuring commodities other than liquid are derived from the half bushel by successively dividing that measure by two.

2020. (§ 3131.) *Division of capacity for commodities sold by heap measure.*—The measures of capacity for charcoal, ashes, marl, manure, Indian corn in the ear, fruit, and roots of every kind, and for all other commodities commonly sold by heap measure, are the half bushel and its multiples and subdivisions; and the measures used to measure such commodities must be made cylindrical, with plane and even bottom, and must be of the following diameters from outside to outside: The bushel, nineteen and a half inches; half bushel, fifteen and a half inches, and the peck, twelve and a third inches.

2021. (§ 3132.) *Heap measure.*—All commodities sold by heap measure must be duly heaped up in the form of a cone; the outside of the measure, by which the same are measured, to be the limit of the base of the cone, and said cone to be as high as the article will admit.

2022. (§ 3133.) *Contracts construed.*—Contracts made within this state for work to be done, or for anything to be sold or delivered by weight or measure, must be construed according to the foregoing standards.

Higgins v. California Co., 120 Cal. 630; 52 Pac. 1080.

2023. *Standard ton and bushel.*—The ton consists of twenty hundred pounds, but a ton of mineral coal is expressed by the conventional quantity of twenty-six and one-third bushels of seventy-six pounds each. A bushel of each of the articles hereinafter named consists of the number of pounds affixed to each, to-wit:

	Pounds
Apples and Pears	45
Beans	60
Bran	20
Carrots	50
Barley	48
Beets	50
Buckwheat	52
Coal, Mineral	76
Corn, in the ear	70
Corn meal	50
Lime, unslacked	80
Oats	32
Parsnips	50
Peas	60
Salt	50
Corn, shelled	56
Hay, per ton	2000
Malt	30
Onions	57
Potatoes	60
Rye	56

Seeds.	Pounds.
Blue Grass	14
Timothy	45
Hemp	44
Turnips	50
Clover	60
Hungarian Grass	50
Flax	56
Wheat	60

Any person, persons, companies or corporations who shall violate the provisions of this Section by demanding, exacting or taking more than the prescribed number of pounds per bushel or per ton as fixed by the provisions of this Section, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars, nor more than Five Hundred Dollars, or by imprisonment in the county jail not less than three nor more than six months or by both such fine and imprisonment, in the discretion of the court. [*Act approved February 18th, 1901.*] (7th Sess. 137-9.)

2024. *Measurement of hay in the stack.*—That, from and after the passage of this law, unless otherwise agreed to between the contracting parties, the following shall constitute the legal measurement for hay in stack in the State of Montana: Four hundred twenty-two (422) cubic feet shall constitute a ton of clean, native, blue joint hay, after thirty days and up to three months settlement in stack; but, when the same shall have been over six months in the stack, three hundred and forty (340) cubic feet shall be considered a ton. As to all other kinds of hay, after the same shall have settled in stack from sixty days up, five hundred and twelve (512) cubic feet shall constitute a ton of alfalfa or rough slough grass, after the same shall have been in the stack thirty (30) days and up to one (1) year. Four hundred and fifty (450) cubic feet shall constitute a ton of clean timothy and clover after the same shall have been in the stack thirty days, and up to one year. Making measurements of hay in stack, the following is hereby made the legal method of measurement, to-wit: The width and length of the stack shall be measured, and the distance from the ground against one side of the stack to the ground against the other side of the stack, directly over and opposite, shall be taken in linear feet and inches, and then the width shall be subtracted from the measurement over the stack, as above indicated, the result divided by two, and the result so obtained multiplied by the width, and the result thus obtained multiplied by the length, which will give the number of cubic feet contained in the stack, and the tonnage shall thereupon be determined by dividing the total number of cubic feet by the number of cubic feet allowed under the provisions of this Act for a ton. [*Act approved March 6, 1907.*] (10th Sess. Chap. 91.)

2025. (§ 3135.) *Weights and measures inspected by county sealer.*—All venders and traders in goods and merchandise, gold dust and other articles of traffic, must have their balances, weights and measures compared with the standard of their respective counties, and approved and marked by the county sealer, and if the same are found to be correct to be sealed with the name or initial letters of the county inscribed thereon, or condemned by him if found incorrect and marked “condemned.”

2026. (§ 3136.) *Penalties.*—The penalties for using, marking, or stamping false weights and measures, or selling therewith is provided for in chapter IX., title XII., part I, Penal Code.

CHAPTER X.

TIME.

Section 2027. How computed.

“ 2028. *Leap year.*

“ 2029. *The year and its parts.*

“ 2030. *The week.*

“ 2031. *The day.*

“ 2032. *“Day time” and “night time” defined.*

2027. (§ 3140.) *How computed.*—Time is computed according to the Gregorian or new style; and the first of January in every year passed since seventeen hundred and fifty-two or to come, must be reckoned as the first day of the year.

2028. (§ 3141.) *Leap year.*—Except the year nineteen hundred, every fourth year, which, by usage in this state, is considered a leap year, is a leap year consisting of three hundred and sixty-six days.

2029. (§ 3142.) *The year and its parts.*—The term “year” means a period of three hundred and sixty-five days; a half year, one hundred and eighty-two days; a quarter of a year, ninety-one days; and the added day of a leap year, and the day immediately preceding, if they occur in any such period, must be reckoned together as one day.

2030. (§ 3143.) *The week.*—A week consists of seven consecutive days.

People v. District, 121 Cal. 527; 50 Pac. 1068.

2031. (§ 3144.) *The day.*—A day is the period of time between any midnight and the midnight following.

Derby v. Modesto, 104 Cal. 522; 38 Pac. 900.

2032. (§ 3145.) *“Day time” and “night time” defined.*—“Day time” is the period of time between “sunrise” and “sunset,” and “night time” is the period of time between “sunset” and “sunrise.”

CHAPTER XI.

MONEY OF ACCOUNT.

Section 1033. Money of account.

“ 2034. *Limitation on preceding section.*

“ 2035. *Amount, how stated in judgments, etc.*

2033. (§ 3150.) *Money of account.*—The money of account in this state is the dollar, cent and mill. Public accounts and all proceedings in courts must be kept and had in conformity to this regulation.

2034. (§ 3151.) *Limitation on preceding section.*—The provisions of the preceding section do not vitiate or affect any account, charge, or entry originally made, or any note, bond, or other instrument expressed in any other money of account; but the same must be reduced to dollars and cents in any action.

2035. (§ 3152.) *Amount, how stated in judgments, etc.*—In judgments and executions the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

CHAPTER XII.

TRADE MARKS.

Section 2036. Trade mark defined.

“ 2037. *Use of trade mark, how secured, affidavit and filing.*

“ 2038. *Record by general recorder of marks and brands.*

“ 2039. *Who are owners of trade marks; how transferred.*

“ 2040. *Penalties.*

2036. (§ 3160.) *Trade mark defined.*—The phrase “trade mark,” as used in this chapter, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label or wrapper usually affixed by any mechanic, manufacturer, druggist, merchant or tradesman to denote any goods to be goods imported, manufactured, produced, compounded or sold by him, other than any name, word, or expression generally denoting any goods to be of some particular class or description, or the designation or name for any mill, hotel, factory, or other business.

2037. *Use of trade mark, how secured.*—Any person may record any trade mark or name, by filing with the Secretary of State his claim to the same, and a copy or description of such trade mark or name, with his affidavit attached thereto, certified to by any officer authorized to take acknowledgements of conveyances, setting forth that he, or the firm or corporation of

which he is a member, is the exclusive owner or agent of the owner of such trade mark or name. [*Act approved February 25th, 1899, § 1.*] (6th Sess. 103.)

2038. *Record. Fees.*—The Secretary of State must keep for public examination a record of all trade marks or names filed in his office, with the date when filed and the name of the claimant, and must not record any two like trade marks or names. He must at the time of filing and recording a trade mark or name, collect from the claimant a fee of three dollars. [*Act approved February 25th, 1899, § 1.*] (6th Sess. 103.)

2039. (§ 3163.) *Who are owners of trade marks; how transferred.*—Any person who has first adopted and used a trade mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain by injunction any use of trade marks or names in violation of this chapter.

Spieker v. Lask, 102 Cal. 44; 36 Pac. 362.

2040. (§ 3164.) *Penalties.*—The penalty for forging, counterfeiting, or unlawful using trade marks is provided in § 8447 (636) of the Penal Code.

CHAPTER XIII.

LOCAL OPTION.

Section 2041. Election to be ordered upon application of one-third of the voters of any county.

“ 2042. *Notice of election; regulations; qualifications of voters.*

“ 2043. *Ballots, what to contain.*

“ 2044. *Election, how held.*

“ 2045. *Dealing in intoxicating liquors prohibited if majority of vote against sale.*

“ 2046. *No election more than once in two years.*

“ 2047. *Sale of liquors prohibited.*

“ 2048. *Penalty for violation.*

“ 2049. *Election, how contested.*

2041. (§ 3180.) *Election to be ordered upon application of one-third of the voters of any county.*—Upon application by petition, signed by one-third of the voters who are qualified to vote for members of the legislative assembly in any county in the state, the board of county commissioners must order an election to be held at the places of holding elections for county officers, to take place within forty days after the reception of such petition, to determine whether or not any spirituous or malt liquors, wine, or cider, or any intoxicating liquors or drinks may be sold within the limits of the county. No election, under this

chapter, must take place in any month in which general elections are held. The county commissioners must determine on the sufficiency of the petition presented by the last assessment roll of the county.

In re O'Brien, 29 Mont. 530; 75 Pac. 196. The adoption of the local option liquor law in a county prohibits the sale of intoxicating liquors in incorporated towns within the county. The right to traffic in intoxicating liquors is subject to the control of the police power. Any

invalidity of the local option liquor law on account of its failure to except liquor for medicinal or sacramental purposes, or imported in original packages, cannot be urged by one who sold liquor otherwise.

2042. (§ 3181.) *Notice of election; regulations; qualifications of voters.*—The notice of election must be published once a week for four weeks in such newspapers of the county where the election is to be held as the board may think proper.

2043. (§ 3182.) *Ballots, what to contain.*—The county clerk must furnish the ballots to be cast at such election, as provided in the general election law, which ballots must contain the following words: "Sale of intoxicating liquors, yes;" "Sale of intoxicating liquors, no;" and the elector in order to vote must mark an X opposite one of the answers.

2044. (§ 3183.) *Election, how held.*—The polling places must be established, the judges and other officers to conduct the election must be designated, and the election must be held, canvassed and returned in all respects in conformity to the general election law, as provided in title II., part III., of this code. No new registration is required, but the provisions of §§ 491 (1222) and 492 (1223) of this code, apply.

2045. (§ 3184.) *Dealing in intoxicating liquors prohibited if majority of vote against sale.*—If a majority of the votes cast are "Sale of intoxicating liquors, no," the board of county commissioners must publish the result once a week for four weeks in the paper in which the notice of the election was given. The provisions of this chapter take effect at the expiration of the time of the publication of the notice, and no license must be issued pending the publication.

2046. (§ 3185.) *No election more than once in two years.*—No other election must be held in the same county oftener than once in two years thereafter.

2047. (§ 3186.) *Sale of liquors prohibited.*—If a majority of the votes at the election are, "Sale of intoxicating liquors, no," it shall not be lawful for any person within the county in which the vote was taken, to sell, either directly or indirectly, or give away, to induce trade at any place of business, or furnish to any person, any alcoholic, spirituous, malt, or intoxicating liquors.

2048. (§ 3187.) *Penalty for violation.*—If a majority of the votes at the election are, "Sale of intoxicating liquors, no," then any person violating the provisions of this chapter is guilty of a misdemeanor, and is punishable as prescribed by the Penal Code.

2049. (§ 3188.) *Election, how contested.*—Any election held under the provisions of this chapter may be contested in the same manner as prescribed in title II., part III., of the Code of Civil Procedure.

In re O'Brien, 29 Mont. 530: 75 Pac. 196.

CHAPTER XIV.

POOR.

Section 2050. The board of county commissioners vested with control.

- " 2051. *Relatives to care for poor; penalty for neglect.*
- " 2052. *Intemperate person not entitled to support.*
- " 2053. *When a person may receive relief from the county.*
- " 2054. *Order to publish notice for proposals to care for the poor.*
- " 2055. *Bids to be received annually and contract to be let to the lowest responsible bidder.*
- " 2056. *Contract for medicines and medical attendance.*
- " 2057. *Board may reject any bid.*
- " 2058. *Bond of contractor. Duty of physician to examine and notify contractor.*
- " 2059. *Persons falling sick to be cared for.*
- " 2060. *Application of persons seeking relief.*
- " 2061. *Persons belonging to another county to be removed.*
- " 2062. *Non-residents furnished temporary relief.*
- " 2063. *Poor farm and work house.*
- " 2064. *Surplus moneys in poor fund.*
- " 2065. *Burial of deceased soldiers, sailors and marines.*
- " 2066. *County of residence to bear expense.*
- " 2067. *Person conducting burial to report expense.*
- " 2068. *Duty of county clerk.*
- " 2069. *Person conducting burial not to receive compensation.*
- " 2070. *Act not to apply to inmates of soldiers' home.*

2050. (§ 3200.) *The board of county commissioners vested with control.*—The board of county commissioners are vested with entire and exclusive superintendence of the poor.

2051. (§ 3201.) *Relatives to care for poor; penalty for neglect.*—Every person without means, who is unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy or other cause, must be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they, or either of them, be of sufficient ability in the order named; and every person who fails or refuses to support

his or her father, grandfather, mother, grandmother, child, sister or brother, in the order named, when directed by the board of county commissioners of the county where such poor person is found, whether such relative reside in the county or not, must pay to the county for the use of such person the sum of thirty dollars per month, which may be recovered in the name of the county.

2052. (§ 3202.) *Intemperate person not entitled to support.*—When any person becomes poor from intemperance or other vice, he is not entitled to any support from relatives, except from parent or child.

2053. (§ 3203.) *When a person may receive relief from the county.*—When such person does not have the relatives mentioned in § 2051 (3201) in any county, or such relatives are not able, or fail or refuse to maintain such person then he must receive relief from the county, as hereinafter provided.

2054. (§ 3204.) *Order to publish notice for proposals to care for the poor.*—The board must, at their session in September, make an order directing the clerk of the board to publish a notice in a newspaper, inviting sealed proposals for the care, support and maintenance of the sick, poor and infirm of the county, per capita, by the week, for the succeeding year; and said proposals to include the entire cost of feeding, clothing and nursing of the sick, poor and infirm, and the burial expenses; and the notice must be published in a newspaper printed in the county for four consecutive weeks, at least once a week.

2055. (§ 3205.) *Bids to be received annually and contract to be let to the lowest responsible bidder.*—The proposals must be addressed to the clerk of the board, and the board must annually, at their December session, award the contract for the care, support and maintenance of the sick, poor and infirm of the county, to the lowest responsible bidder for the ensuing year.

2056. (§ 3206.) *Contract for medicines and medical attendance.*—The board must annually, at their December meeting, make a contract with some resident practicing physician to furnish medical attendance to the sick, poor and infirm of the county, and to the inmates of the county jail, and must also make provisions for the furnishing of medicine to the same.

2057. (§ 3207.) *Board may reject any bid.*—The board may reject the bid of and refuse to contract with any person whom they deem unsuitable as a contractor under the next three preceding sections.

2058. (§ 3208.) *Bond of contractor. Duty of physician to examine and notify contractor.*—Any person with whom any such contract is made, must execute a bond to the state in a sum not less than one thousand nor more than five thousand dollars, with two or more sureties, conditioned for the faithful performance

of his contract; said bond to be approved by and filed with the chairman of the board. It is the duty of the physician with whom the contract for medical attendance is made, to examine each week any person who is a charge upon the county, and, if after such examination he is satisfied that such person is able to support and maintain himself, he must so notify the contractor having the person in charge, by leaving with the contractor a notice of the fact that such person requires no further medical attendance, and file a duplicate thereof with the clerk of the board. After the serving of said notice, and filing the duplicate thereof with the clerk, the person mentioned therein ceases to be a charge upon the county.

2059. (§ 3209.) *Persons falling sick to be cared for.*—When any non-resident without means is sick within any county in this state, and not able to pay his board, nursing or medical attendance, the board must, on application being made, give assistance to such person as is necessary, and if the person dies, the board must give him a decent burial, and make allowance for the expenses incurred and order the same to be paid out of the county treasury.

2060. (§ 3210.) *Application of persons seeking relief.*—Any person seeking relief must make application to any member of the board, who, before granting an order for relief, must require satisfactory evidence that he has been a resident of the county for two months immediately preceding the day upon which the application is made.

2061. (§ 3211.) *Persons belonging to another county to be removed.*—When application is made, if it appears to the satisfaction of the board that the person applying has resided in the county for two months, he is entitled to the relief provided by this chapter; but if on examination it appears that the applicant is a resident of some other county of the state, the board must, at the expense of the county, cause him to be removed to the county of which he is a resident.

2062. (§ 3212.) *Non-residents furnished temporary relief.*—Persons who have not been residents of a county two months may be furnished relief by the commissioners in cases of extreme necessity and destitution.

2063. (§ 3213.) *Poor farm and work house.*—The board may purchase, improve and keep in repair a tract of land not exceeding one hundred and sixty acres, to be known as a poor farm, and to erect thereon suitable work houses for the use, health and employment of all persons as are a county charge, and the poor farm, with the work houses and the persons who are a county charge, must be under such rules and regulations as the board orders; and may also provide for the care, support and maintenance of the sick, poor and infirm of the county upon the poor farm.

2064. (§ 3214.) *Surplus moneys in poor fund.*—Any surplus that may accumulate in the poor fund of the county may be set apart and applied to the purposes of the next preceding section.

2065. *Burial of deceased soldiers, sailors and marines.*—That it shall be the duty of the board of county commissioners of each county in this State to designate some proper person in the county, whose duty it shall be to cause to be decently interred the body of any honorably discharged soldier, sailor or marine, who shall have served in the army or navy of the United States, who may hereafter die without leaving sufficient means to defray funeral expenses. Such burial shall not be made in any burial ground or cemetery, or in any portion of such burial ground or cemetery used exclusively for the burial of pauper dead. *Provided* the expense of each burial shall not exceed the sum of fifty dollars. [Act approved February 28th, 1903, § 1.] (8th Sess. Chap. 39.)

2066. *County of residence to bear expense.*—The expenses of such burial shall be paid by the County in which such soldier, sailor or marine dies, but if such deceased person has a residence in another county in this state than the one paying the expenses, the county of his residence shall refund the money advanced by the county where he died. Expenses of such funeral shall be audited and paid as other expenses are audited and paid by the county. [Act approved February 28th, 1903, § 2.] (8th Sess. Chap. 39.)

2067. *Person conducting burial to report expense.*—It shall be the duty of the person appointed as provided in section one of this Act before he assumes the charge and expenses of any such burial to first satisfy himself by a careful inquiry into all the circumstances of the case that the family of such deceased person, if he had any at the time of his decease residing in such county, is unable for want of means to defray the cost of such burial or funeral, and if he finds such inability existing he shall cause such deceased person to be buried as provided in this Act, and he shall immediately report his action to the clerk of the board of County Commissioners, setting forth all the facts together with the name, rank and command so far as is known to which deceased belonged as such soldier, sailor or marine, the date of death, place of burial and his occupation while living, and also an itemized statement of the expenses incurred by reason of such burial. [Act approved February 28th, 1903, § 3.] (8th Sess. Chap. 39.)

2068. *Duty of county clerk.*—It shall be the duty of the Clerk of the Board of County Commissioners upon receiving the report and statement of expenses provided for in this Act to transcribe in a book to be kept for that purpose all the facts contained in such report concerning such soldier, sailor or marine. It shall also be the duty of said clerk upon receiving the report of the

burial of such deceased person to make application to the proper authorities under the Government of the United States for a suitable headstone, as provided by Act of Congress, and to cause the same to be placed at the head of the grave of such soldier, sailor or marine, the expense of which shall not exceed the sum of ten dollars for cartage of and properly setting up each stone. The expense thus incurred shall be audited and paid as provided in § 2066 (2) of this Act for the burial expenses. [*Act approved February 28th, 1903, § 4.*] (8th Sess. Chap. 39.)

2069. *Person conducting burial not to receive compensation.*—The person appointed as provided in § 2065 (1) of this Act shall not receive any compensation for any duties he may perform in compliance with this Act. [*Act approved February 28th, 1903, § 5.*] (8th Sess. Chap. 39.)

2070. *Act not to apply to inmates of soldiers' home.*—This Act shall not apply to such soldiers, sailors or marines as may hereafter die in the State Soldier's Home in this State. [*Act approved February 28th, 1903, § 6.*] (8th Sess. Chap. 39.)

CHAPTER XV.

FIRE WARDEN, FIRES AND FIREMEN.

Section 2071. *State fire warden.*

" 2072. *Deputy fire warden.*

" 2073. *Expenses and expenditures, how paid.*

" 2074. *Appointments and duties of fire warden.*

" 2075. *Dangerous chimneys, etc., to be removed, etc.; penalty for violating.*

" 2076. *Fire companies, how organized.*

" 2077. *Elect officers, make by-laws, exempt firemen.*

" 2078. *County clerk may issue exempt certificates.*

" 2079. *Seal and record of membership.*

" 2080. *Duties of chief.*

" 2081. *Special tax.*

2071. *State fire warden.*—That there is hereby created the office of State Fire Warden and the State Game and Fish Warden is hereby made ex-officio State Fire Warden to serve as such State Fire Warden without additional salary. [*Act approved March 7, 1907, § 1.*] (10th Sess. Chap. 147.)

2072. *Deputy fire wardens.*—That all of the Deputy State Game and Fish Wardens shall be Deputy Fire Wardens to serve without extra salary and that said State Fire Warden and said Deputies shall, under such rules and regulations as the State Board of Land Commissioners shall provide, protect the timber of the State, and especially the timber owned by the State, from destruction by fire, and for such purpose in emergencies may employ men and incur other expenses when necessary and such

Fire Warden and deputies shall have power and authority to make arrests of any person or persons who may violate any of the laws of this State relating to prairie or forest fires. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 147.)

2073. *Expenses and expenditures; how paid.*—That the actual expenses and expenditures of said Fire Warden and Deputies necessarily incurred under this Act shall be paid in the same manner as other expenses incurred in managing the State lands and the State Auditor is hereby authorized to draw his warrants for such expenses and expenditures and the State Treasurer is hereby directed to pay the same. [Act approved March 7, 1907, § 3.] (10th Sess. Chap. 147.)

2074. (§ 3230.) *Appointment of and duties of fire warden.*—The board of county commissioners must, upon petition of ten residents of any unincorporated city, town, or village in the county, appoint a fire warden for such city, town, or village, whose duty it is to examine all chimneys, stoves, stove pipes, ovens, furnaces, boilers, and appurtenances thereto belonging.

2075. (§ 3231.) *Dangerous chimneys, etc., to be removed, etc.; penalty for violating.*—When any chimney, stove, stove pipe, oven, furnace, boiler, or appurtenance thereto, are defective, out of repair, or so placed in any building as to endanger it or any other building by communicating fire thereto, the fire warden, on complaint of any citizen, either orally or in writing, or upon his own examination, or other satisfactory proof, must give written notice to the owner or occupant of the building or premises, directing the owner or occupant to repair the same so as to make it secure against accident by fire; and he may in the notice require the occupant or owner to replace any defective flue or stove pipe with a new and safe one; and if the occupant or owner neglects for the space of three days to comply with the terms of said notice, is punishable as provided in § 1125* of the Penal Code.

* This section was repealed by Act of March 8, 1897. (5th Sess. 254.)

2076. (§ 3232.) *Fire companies, how organized.*—Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed every three months. There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants; but one company must be allowed in any city, town or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members.

2077. (§ 3233.) *Elect officers, make by-laws, exempt firemen.*—Every such fire company must choose or elect a foreman, who is the presiding officer, and a secretary and treasurer, and may establish and adopt by-laws and regulations, and impose penalties, not exceeding five dollars, or expulsion for each offense. The officers and members of unpaid fire companies regularly organized and exempt firemen, are entitled to the following privileges and exemptions, viz: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty; exemption from military duty, except in case of war, invasion or insurrection. Every fireman who has served five years in an organized company in this state is an “exempt fireman,” and must receive from the chief engineer of the department to which he belonged a certificate to that effect. Every active fireman must have a certificate of that fact, signed by the chief of the fire department or the foreman of the company to which he belongs; such certificates must be countersigned by the secretary, and over the seal of the company, if one is provided. Each certificate entitles the holder to exemption from military and jury duty.

2078. (§ 3234.) *County clerk may issue exempt certificates.*—In lieu of issuing certificates to exempt firemen by the chief of the fire department, as provided in the last section, on the certificate of the foreman and secretary of any fire company, or the chief of the department, provision being made therefor in the by-laws of the company, “exempt certificates” may be issued by the clerk of the county, over his official seal and signature, which entitles the holder to like exemption from military and jury duty.

2079. (§ 3235.) *Seal and record of membership.*—Every fire department regularly organized may adopt a department seal, the name of the particular fire department to which it belongs, which must be under the control of and for the use of the secretary, and be by him affixed to exempt certificates, certificates of active membership, and such other documents as the by-laws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the by-laws provide for the faithful performance of his duties. The secretary of the fire department, or fire company, must keep a record of all certificates of exemption or active membership, the date thereof, and to whom issued; and when no seal is provided, similar entries of certificates issued to obtain county clerk’s certificates. Every such Certificate is prima facie evidence of the facts therein stated.

2080. (§ 3236.) *Duties of chief.*—The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when

directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires, with his badge of office conspicuously displayed; must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keep the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

2081. (§ 3237.) The board of county commissioners are authorized to establish the fire limits in any unincorporated town or village, and at the time of the annual levy of taxes may levy a special tax upon all the property within such limits for the purpose of buying apparatus and maintaining the fire department of any such town or village, and such tax must be collected as are other taxes.

CHAPTER XVI.

FENCES.

- Section 2082. Legal fences defined.*
 “ 2083. *Penalty for violation.*
 “ 2084. *Barbed wire fences to be kept in repair.*
 “ 2085. *Partition fences.*
 “ 2086. *Partition fences to be maintained at joint expense.*
 “ 2087. *Fence when joint occupancy ceases.*
 “ 2088. *When partition fence removed.*
 “ 2089. *Repairs of partition fences.*
 “ 2090. *Liability of owners of stock for trespass.*
 “ 2091. *Stock trespassing may be retained.*

2082. *Legal fences defined.*—The following fences only are legal, and they must not be less than four-feet-four-inches in height.

1. All fences constructed of at least one strong pole, rail or board, and three of either wires, or strong poles, rails, or boards, or both, so that there be three altogether thereunder, which lower three, whether all wires, or poles, rails or boards and wires, may be arranged at the pleasure of the builder; but all must be fastened firmly, as nearly equidistant as possible to substantial posts firmly set in the ground, not more than twenty feet apart, or set to well-supported, substantial leaning posts not more than twenty feet apart. But the lower pole, rail, board or wire, must not be more than one foot and a half above the ground.

2. All fences constructed of at least four horizontal wires

each, if cabled, to consist of not less than two wires, of at least number twelve gauge; or, if plain, of not less than a number nine gauge, the lowest of which must not be more than one foot and a half above the ground, securely fastened, as nearly equidistant as possible to substantial posts, firmly set in the ground, or to well supported substantial leaning posts, not exceeding thirty-two feet apart, with pickets of wood or wire interwoven in or fastened to said wires, between each two of said posts, in such manner that there must not be more than five and one-half feet space between such pickets and posts or nearest pickets; the pickets, if of wire, to be of not less than number eight gauge.

3. All substantial worm fences and stone walls.

4. All rivers, hedges, mountain ridges and bluffs or other barrier, over or through which it is impossible for stock to pass. But none of the fences hereinabove described are legal for stock-yards or places where either grain, hay or straw is kept; but such places must be inclosed by a fence at least six feet high, constructed of one strong pole, board or rail, with at least five strong rails, poles, or boards or barbed wire thereunder, securely fastened, as nearly equidistant apart as possible, to substantial posts firmly set in the ground, not more than fourteen feet apart; provided, that where wire is used in stock-yards, smooth wire only, and not barbed wire, shall be used.

5. All fences constructed of any standard woven wire field fencing, not less than four-feet-four-inches in height, securely fastened to substantial posts, set at a distant not exceeding thirty-five feet apart. [Act approved February 27, 1905.] (9th Sess. Chap. 37.)

2083. (§ 3251.) *Penalty for violation.* Any person constructing or maintaining any fence of any kind not described in the next preceding section, is liable in a civil action for all damages caused by reason of injury to stock resulting from such defective fence.

2084. (§ 3252.) *Barbed wire fences to be kept in repair.*—The owners of barbed wire fences must keep the same in repair, and any person receiving notice in writing, that his barbed wire fence or any part thereof is down, or in such condition as to be likely to injure any livestock, and fails or refuses to repair such fence, is liable to pay damages in an amount equal to the value of any cattle, horse, mule or other domestic animal which may be injured by coming into contact with the fence.

2085. (§ 3253.) *Partition fences.*—The occupants of adjoining lands enclosed with fences must build and maintain partition fences between their own and the next adjoining enclosure in equal shares, so long as both continue to enclose the same; and such partition fence must be kept in good repair throughout the year, unless the occupants otherwise mutually agree.

2086. (§ 3254.) *Partition fences to be maintained at joint expense.*—If any occupant of land adjoining the enclosure of another enclose the same, upon the enclosure of such other person, he must, within three months thereafter, build his proportion of such partition fence, or refund to the owner thereof an equal proportion of the value, at that time, of any partition fence of such adjoining occupant.

2087. (§ 3255.) *Fence when joint occupancy ceases.*—Whenever any lands belonging to different persons in severalty, have been enclosed and occupied in common, or without a partition fence between them, and one of such occupants desires to occupy his part in severalty, the other occupant must, within six months after being notified in writing, build and maintain his proportion of such partition fence as may be necessary for that purpose and in case of neglect or refusal so to do, the person giving such notice may build such fence at the expense of the person so neglecting or refusing, the amount expended to be recovered in an action, together with all damages he may sustain on account of such neglect or refusal.

2088. (§ 3256.) *When partition fence removed.*—If the occupants of adjoining lands have heretofore built or hereafter build their respective portions of a partition fence, and either of them at any time desires to suffer the land occupied by him to lie open, he may, after having given to the occupants of the adjoining land at least six months' notice of his intention so to do, remove his proportion of the partition fence, unless such adjoining occupant pay or tenders to him the value thereof; and if such fence be removed without notice, or after payment or tender of the value as aforesaid, the person removing the same is liable to the person injured for all damages he may sustain thereby.

2089. (§ 3257.) *Repairs of partition fences.*—In case any person neglects or refuses to repair or rebuild any partition fence which by law he ought to build or maintain, the occupant of the adjoining land may, after giving sixty days' notice that a new fence should be erected, or five days' notice in writing that the repairing of such fence is necessary, build or repair such fence at the expense of the party so neglecting or refusing, the amount so expended to be recovered from him; and the party so neglecting or refusing, after receipt by him of the notice above provided, is liable to the party injured for all damages he may sustain thereby.

2090. (§ 3258.) *Liability of owners of stock for trespass.*—If any cattle, horse, mule, ass, hog, sheep, or other domestic animal break into any enclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the enclosure which may be sustained thereby. This section must not be construed so as to re-

quire a legal fence in order to maintain an action for injury done by animals running at large contrary to law.

Monroe v. Cannon, 24 Mont. 320; 61 Pac. 864. This statute applies to trespasses committed by animals running at large without the knowledge of the owner, and not to a case where one knowingly appropriates the use of the land of another.

Beinhorn v. Griswold, 27 Mont. 88; 69 Pac. 558. The landowner is not charged with the duty to keep cattle lawfully at large from coming on his land, or make their entry thereon lawful, so as to make

him liable for injuries to such animals caused by the existence of dangerous liquids used in mining operations on the land.

Clemmons v. Gillette, 33 Mont. 328; 83 Pac. 881. A person who unlawfully fences a portion of the public domain cannot maintain an action against another for depasturing such land, and cannot have an injunction to restrain the latter.

2091. (§ 3259.) *Stock trespassing may be retained.*—If any such animal breaks into an enclosure surrounded by a legal fence, or is wrongfully upon the premises of another, the owner or occupant of the enclosure or premises may take into his possession the animal trespassing, and keep the same until all damages, together with reasonable charges for keeping and feeding. Any person who takes or rescues any such animal from the possession of the person in whose custody the same may be, without his consent, is liable to a penalty of not less than five nor more than twenty-five dollars for each of the animals so rescued, which may be recovered by such occupant or owner in any court of competent jurisdiction. Within twenty-four hours after taking such animal into his possession, the owner or occupant must give notice to the claimant of the animal, that he has taken up the animal, if known, or if unknown, he must post a like notice at some public place near the premises.

CHAPTER XVII.

TOLL FOR GRINDING GRAIN.

Section 2092. Rate of toll.

“ 2093. *Owner or occupant accountable for grain.*

“ 2094. *Penalty.*

2092. (§ 3270.) *Rate of toll.*—The owner or occupant of any grist mill within this state is entitled to the one-sixth part of all the wheat, rye, or other grain ground and bolted, and to the one-eighth part of all rye, malt, buckwheat, corn, barley, other grain or peas ground or chopped only.

2093. (§ 3271.) *Owner or occupant accountable for grain.*—The owner or occupant of every mill is accountable for the safe keeping of all grain received in the mill for the purpose of being ground therein, and must deliver the same when ground, or ground and bolted, with the bags or sacks which were delivered in the mill with the grain, to the owner when called for. The bags or sacks must be distinctly marked with the initials or surname of the owner. But the owner or occupant of any mill must not be charged with or made accountable for the loss of any grain, bags, or sacks which may happen by robbery, fire or other acci-

dent, without the fault or neglect of such owner or occupant, or his employe.

2094. (§ 3272.) *Penalty*.—If the owner or occupant, or his employe, takes a greater proportionate quantity of toll than authorized, he is guilty of larceny, and is punishable as provided in the Penal Code.

CHAPTER XVIII.

TREE PLANTING AND ARBORICULTURE.

Section 2095. Arbor day proclamation.

“ 2096. *Damage to planted trees.*

“ 2097. *Bitter Root state emblem.*

2095. *Arbor day proclamation*.—For the purpose of advancing the interests of tree planting and arboriculture in this state, the third Tuesday in April is hereby designated as Arbor Day, and it is the duty of the Governor to annually make his proclamation setting apart that day for the planting of trees and for beautifying homes, cemeteries, highways, public grounds and landscapes, and the teachers in the public schools must on that day instruct the pupils as to the importance of tree planting and give practical lessons in landscape gardening. [Act approved February 13, 1907, § 2.] (10th Sess. Chap. 11.)

2096. (§ 3281.) *Damage to planted trees*.—In case of any damage done to planted trees by animals, the owner of the trees may recover damages from the owner of the animals, if said trees are planted inside of a lawful fence or boxed to a height of not less than five feet.

2097. (§ 3282.) *Bitter Root state emblem*.—The flower known as *lewisia rediviva* (bitter root) shall be the floral emblem of the state of Montana. [Act approved Feby. 27, 1895.]

CHAPTER XIX.

STATISTICS.

Section 2098. Auditor to prepare table of statistics.

“ 2099. *All officers to answer questions of auditor relating thereto.*

“ 2100. *Duty of assessors to collect statistics, enumeration thereof.*

“ 2101. *Duties of various officers.*

“ 2102. *Penalties for non-performance of duties.*

2098. (§ 3290.) *Auditor to prepare table of statistics*.—The state auditor must annually prepare from the official reports and from other reliable sources to which he may obtain access, as full tables of the statistics of the state as may be in his power, and report the result of his labors to the governor.

2099. (§ 3291.) *All officers to answer questions of auditor relating thereto.*—In order to insure a more perfect collection of the statistical information contemplated by this chapter, every officer within this state must answer fully and promptly the special and general questions the state auditor may propound in carrying out the objects mentioned in this chapter, and no person must receive any compensation for answering such questions.

2100. (§ 3292.) *Duty of assessors to collect statistics, enumeration thereof.*—The county assessor must annually, at the time of taking the list of personal property for taxation, take from each person a statement of the number of acres he had the preceding year in wheat, rye, barley, corn, oats, peas, buckwheat and any other grain, and potatoes, and the number of bushels of each produced during the preceding year; the number of acres in cabbage, rutabagas, turnips, onions or other vegetables, and the number of pounds produced in the preceding year, and the number of acres of meadow in cultivation; the number of tons of hay cut; the number of milch cows used in dairy; the number of pounds of cheese and butter produced; the number of sheep and the number of pounds of wool shorn; the number of fruit trees and the number of bushels of each kind of fruit produced; the number of ranches and the wages paid per month; gross receipts from placer mines and wages paid per day; number of grist mills and number of sacks of flour manufactured; number of saw mills and number of thousand feet of lumber cut; number of tan yards and number of sides of leather manufactured; number of foundries and number of tons of castings produced; number of wagons manufactured; number of carpenter shops, and wages paid per day; number of harness and saddlery shops, and value of manufactures; number of blacksmith shops and wages paid per month; number of silversmith shops, and wages paid per month; number of coal mines and number of tons taken out; number of reduction works, furnaces or quartz mills, and the number of tons of bullion produced and the value thereof; the number of manufacturers of every kind, not hereinbefore mentioned; number of butcher shops, and the number of beeves, calves, sheep and hogs slaughtered; number of pounds of bacon cured; number of births and deaths, and the number of deaths resulting from natural causes, and the number from violence the previous year.

2101. (§ 3293.) *Duties of various officers.*—The county assessor must make return of all blanks containing statistical information, together with a full abstract of the same, to the state auditor on the first Monday of November annually; and the state auditor is hereby required to cause to be printed all the necessary blanks to enable the assessors to carry into effect the provisions of this chapter, and to furnish the same to the assessor.

2102. (§ 329½.) *Penalties for non-performance of duties.*—Any assessor failing to perform his duty as provided in this chapter, forfeits his office and the sum of four hundred dollars, which may be recovered in an action brought by the attorney general in the state, and his last quarterly salary must not be paid until such report is made.

CHAPTER XX.

BOXES, BOTTLES AND SIPHONS.

Section 2103. *Marks and devices may be filed.*

“ 2104. *Penalties.*

2103. (§ 3300.) *Marks and devices may be filed.*—Any person engaged in manufacturing, bottling or selling soda, mineral or aerated waters, cider, ginger ale or other aerated, non-intoxicating beverages in bottles or siphons with his name or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such bottles or siphons, or the boxes used by him, may have a trade mark for the same as provided in chapter XII., title VII., part III., of this Code.

2104. (§ 3301.) *Penalties.*—Every person who violates any of this chapter is punishable as provided in § § 8447 (636) and 8451 (640) of the Penal Code.

CHAPTER XXI.

PAWNBROKERS AND JUNK DEALERS.

Section 2105. *Interest pawnbrokers may receive.*

“ 2106. *Search warrant may issue.*

“ 2107. *Service of.*

“ 2108. *Same.*

“ 2109. *Bond.*

“ 2110. *Must keep register.*

“ 2111. *Penalties.*

2105. (§ 3310.) *Interest pawnbrokers may receive.*—No person must carry on the business of pawnbroker or junk dealer by receiving goods pawned, or in pledge for loans, at any rate of interest above ten per cent. per annum, without first obtaining a license. There must be no other or greater amount received by any pawnbroker or junk dealer, his employes or agents, for interest, commission, discount, storage, or caring for property pledged, than the rate of three per cent. per month.

2106. (§ 3311.) *Search warrant may issue.*—Whenever any person makes oath before a magistrate that any property belonging to him has been embezzled or taken without his consent, and that he has reason to believe or suspect, and does suspect, that such property has been pledged with any pawnbroker or junk

dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken, and if found, to seize and bring the same before him.

2107. (§ 3312.) *Service of.*—The officer to whom said warrant is directed and delivered must execute the same and proceed in the same manner as in case of other search warrant.

2108. (§ 3313.) *Same.*—Upon any property seized by virtue of such warrant being brought before the magistrate who issued the same, he must cause such property to be delivered to the person so claiming to be the owner thereof, on whose application the warrant was issued, on his executing a bond as hereinafter directed; and if such bond be not executed within forty-eight hours, the magistrate must cause the said property to be delivered to the person from whose possession it was taken.

2109. (§ 3314.) *Bond.*—The bond must be in a penal sum equal to double the value of the property claimed with two sureties approved by the magistrate in favor of the person from whose possession the property was taken, with a condition that the claimant will on demand pay all damage that may be recovered against him in any suit to be brought within twenty days from the date of such bond, by the pawnbroker or junk dealer from whose possession the property was taken.

2110. (§ 3315.) *Must keep register.*—Every pawnbroker or junk dealer must keep a register, in which must be entered a description of every article pawned to him or purchased by him, with the date of the pawning or purchasing, date when the article must be redeemed, with the name of the person by whom the same was pawned, or by whom purchased, and the amount loaned thereon or paid therefor; and in case of the sale of any article pawned or pledged, the pawnbroker or junk dealer must enter upon said register the name of the purchaser, the time of the sale, the price paid therefor, and the register must always be open to inspection and examination of any peace officer or other persons.

2111. (§ 3316.) *Penalties.*—The penalties for a violation of any of the provisions of this chapter are provided for in chapter X., title IX., part I., of the Penal Code.

CHAPTER XXII.

REGULATING THE SALE OF COAL OR KEROSENE OIL.

Section 2112. *Adulterated oil not to be sold; may be tested.*

“ 2113. *Test, how made; illuminating gas outside of building not included.*

“ 2114. *Penalties.*

“ 2115. *Regulations for the sale of illuminating and heating oils.*

Section 2116. Standard of oils for illuminating purposes.

“ 2117. *County physician to be oil inspector.*

“ 2118. *Duty of county to furnish apparatus.*

2112. (§ 3380.) *Adulterated oil not to be sold; may be tested.*—No person must sell, offer for sale, or have in his possession for sale within this state, any kerosene or coal oil, or any of the products thereof, which, from being adulterated, or from any cause will, at the temperature of one hundred and ten degrees, Fahrenheit's thermometer, emit an explosive vapor or gas, or is deficient in quality for illuminating purposes. The state sealer of weights and measures, or any county sealer, may order a test to be made of any such oil in the possession of any person dealing therein or offering the same for sale, and the expense thereof must be paid by the person offering it for sale.

2113. (§ 3381.) *Test, how made; illuminating gas outside of building not included.*—The quantity used for such test must not be less than one-half pint. The provisions of this chapter do not prevent the use of gas or vapor of oils for illuminating purposes, when the oils from which such gas or vapor is generated, is contained in reservoirs outside of the building illuminated by such gas.

2114. (§ 3382.) *Penalties.*—Every person who violates the provisions of this chapter is punishable as provided in § 8560 (719) of the Penal Code.

2115. *Regulations for the sale of illuminating and heating oils.*—Hereafter it shall be unlawful for any person or persons, association or corporation, to sell or offer for sale, or to give away for illuminating purposes or for heating or burning, or power purposes in any automobile, engine, or in any machinery, any mineral or petroleum oil or any kerosene, gasoline, or benzine, or any oil, fluid, or substance, which is a product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent element, whether manufactured in this State or not, which is below the standard grade as established by the tests prescribed in this Act. And it shall be conclusively presumed that all sales of kerosene oils are for illuminating purposes, unless the cask or vessel containing the same is labelled “For non-illuminating purposes” or some label equivalent thereto. Any person who violates the provisions of this Section shall be deemed guilty of a misdemeanor. [*Act approved March 6, 1907, § 1.*] (*10th Sess. Chap. 121.*)

2116. *Standard of oils for illuminating purposes.*—In testing oil for illuminating purposes the Tester known as Foster Closed Oil Tester shall be used, and the oil to be tested shall not be heated faster than Four degrees per minute. Any oil that will emit a combustible vapor at a temperature less than 110 degrees Fahrenheit, and gasoline used for heating, burning or power pur-

poses in any automobile, engine, or in any machinery, which falls below 63 degrees, Baume, shall be deemed below the standard grade for the purpose of this Act, provided that nothing in this Act shall prevent the sale of distillate or other gasoline petroleum products where the product is sold under its proper commercial name and its specific gravity given. [*Act approved March 6, 1907, § 2.*] (*10th Sess. Chap. 121.*)

2117. *County physician to be oil inspector.*—The County Physician of each County shall be ex-officio oil inspector in and for his county, and it shall be his duty to inspect and test samples of oil brought to him for that purpose upon the payment to him, for his own use, of the sum of One Dollar for making each test; *provided*, that tests may be made and evidence given with respect thereto by any competent person. [*Act approved March 6, 1907, § 3.*] (*10th Sess. Chap. 121.*)

2118. *Duty of county to furnish apparatus.*—The Board of County Commissioners of each County are hereby authorized and it is hereby made its duty to furnish the County Physician with a proper apparatus for testing oil as herein provided; such apparatus to cost not more than Twenty (\$20.00) Dollars; *Provided* that if the State has a State Chemist prior to the time such apparatus is contracted for such State Chemist shall determine the particular quality of the testing apparatus and shall notify the Board who shall thereupon purchase the apparatus decided upon by the State Chemist, but the cost of such apparatus shall not exceed the sum of Twenty Dollars, and the State Furnishing Board are hereby authorized to provide for the use of such State Chemist a testing apparatus at a cost not exceeding Fifty Dollars. [*Act approved March 6, 1907, § 4.*] (*10th Sess. Chap. 121.*)

CHAPTER XXIII.

AUCTIONS.

- ARTICLE I. AUCTIONEERS.
- II. REGULATIONS RESPECTING SALES.
- III. FRAUDS AND PENALTIES.

ARTICLE I.

AUCTIONEERS.

- Section 2119. *Who may become auctioneers, and how.*
- “ 2120. *The bond, sureties, approval, and filing.*
- “ 2121. *Government goods are exempt.*
- “ 2122. *Original application, how classified.*
- “ 2123. *Renewal of license.*
- “ 2124. *Renewal, for how long; exceeding class by sales.*
- “ 2125. *Not to transfer license.*
- “ 2126. *Auctioneers ex-officio.*
- “ 2127. *Assistant, who may act and when.*

2119. (§ 3400.) *Who may become auctioneers, and how.*—Any citizen of this state may become an auctioneer, and be authorized to sell real or personal property at public auction in any county in this state, on giving a bond in accordance with the provisions of this article for the faithful performance of his duties, and on payment of the license therefor in every county in which he may do business. [Act approved March 7, 1895.]

2120. (§ 3401.) *The bond, sureties, approval, and filing.*—The bond must be conditioned to be paid to the state of Montana, with one or more sureties in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office. [Act approved March 7, 1895.]

2121. (§ 3402.) *Government goods are exempt.*—No auctioneer's license is required for the selling of any goods at public sale belonging to the United States, or to this state, or for the sale of property by virtue of any process issued by any state or federal court.

2122. (§ 3403.) *Original application, how classified.*—Every original application for auctioneer's license must be accompanied by a certified copy of the bond required by this article, and with a verified statement of the amount of sales proposed to be made monthly and the license charge for the first quarter classified thereby. [Act approved March 7, 1895.]

2123. (§ 3404.) *Renewal of license.*—Every auctioneer applying to the county treasurer for a renewal of his license must accompany the application with a statement, under oath, setting forth that his average receipts per month on account of sales during the preceding quarter did not exceed the amount specified in the class of license for which he applies. The county treasurer must provide blank forms of affidavit for that purpose, and administer the oath required to such applicants without charge.

2124. (§ 3405.) *Renewal, for how long; exceeding class by sales.*—After the first quarter, licenses may be issued for the class fixed for a term not exceeding one year, at the option of the auctioneer. No auctioneer must exceed the amount of sales of the class in which his license is fixed. For every violation of this section, in addition to the criminal penalty, the auctioneer forfeits two hundred and fifty dollars.

2125. (§ 3406.) *Not to transfer license.*—No auctioneer is permitted to transfer his license to any other person for any part of the time for which his license is issued; nor is any auctioneer permitted to use his license for the purpose of transacting an auction business in more than one store or specified place of business.

2126. (§ 3407.) *Auctioneers ex-officio.*—In any city or town where there is no auctioneer, the sheriff or a constable thereof

is ex-officio auctioneer, and is permitted to sell any property, real or personal, at public auction; and for any delinquency as such ex-officio auctioneer he is liable on his official bond.

2127. (§ 3408.) *Assistant, who may act and when.*—Every auctioneer, in case of inability to attend an auction by reason of sickness, or the performance of any duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ a co-partner or clerk to hold such auction in his name and behalf, such employe to take and file with the county clerk of the county an affidavit faithfully to perform the duties of auctioneer. But any auctioneer may employ a crier at any sale, for whose acts he shall be responsible.

ARTICLE II.

REGULATIONS RESPECTING SALES.

Section 2128. Auctioneers to designate places of business.

“ 2129. *To sell at no other place.*

“ 2130. *Power of city authorities.*

“ 2131. *Book for live stock.*

“ 2132. *Book of sales.*

“ 2133. *Commissions, and penalty of overcharge.*

“ 2134. *Quarterly report of sales.*

2128. (§ 3420.) *Auctioneers to designate places of business.*—No auctioneer in any city of this state must have at one time more than one place for holding auction; and every such auctioneer, before acting as such, must file with the clerk of the county in which said city is situated a writing signed by him, designating such place, and naming therein the partners, if any, engaged with him in business.

2129. (§ 3421.) *To sell at no other place.*—No auctioneer must expose to sale any articles at any other place than that so designated, except goods sold in original packages as imported, household furniture, and such bulky articles as have been usually sold in warehouses, or in the public streets, or on the wharves.

2130. (§ 3422.) *Power of city authorities.*—The city council or other corresponding authority of each city may designate such place or places therein for the sale by auction of horses, carriages, and household furniture, as they deem expedient.

2131. (§ 3423.) *Book for live stock.*—Every auctioneer who sells any animal of the horse kind, or any mules, must keep a book, in which he must register the name of each and every person bringing or offering any horse or mule to be sold, together with the marks and brands. The book is a public record, subject to the inspection of any person desiring to inspect the same.

2132. (§ 3424.) *Book of sales.*—Each auctioneer must keep a book, in which he must enter all sales, showing the name of the

owner of the goods sold, to whom sold, and the amount paid, and the date of each sale, which book must at all times be open for the inspection of any person interested therein.

2133. (§ 3425.) *Commissions, and penalty of overcharge.*—No auctioneer must demand or receive a higher compensation for his services than a commission of one per cent. on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section, in addition to the criminal penalty, forfeits to the party aggrieved, two hundred and fifty dollars, and must refund the excess of charge.

2134. (§ 3426.) *Quarterly report of sales.*—Every auctioneer must quarterly make to the county clerk a report, under oath, showing:

1. The aggregate amount of auction sales made by him for the preceding quarter, designating the months and the amount for each month.
2. The days of each month on which auction sales were made, and the character of the property sold by him during each month.
3. The amount of all private sales made, and the day on which they were made.
4. A statement of any partner, clerk or other employe connected with him in his business, and what sales, if any, have been conducted by them, and why; and
5. The particular place where his business is conducted.

ARTICLE III.

FRAUDS AND PENALTIES.

Section 2135. Penalty for not reporting, or reporting falsely.

“ 2136. *Penalties, how recovered, and for what.*

“ 2137. *Action on bond.*

2135. (§ 3430.) *Penalty for not reporting, or reporting falsely.*—For every false report made, and for every neglect to make the report required in the preceding article, the auctioneer thereby forfeits the sum of two hundred and fifty dollars, to be recovered on his bond. The penalties relating to auctions and auctioneers are provided for in §§ 8603 (781) and 8687 (937), of the Penal Code.

2136. (§ 3431.) *Penalties, how recovered, and for what.*—The penalties imposed by the provisions of this chapter, not otherwise appropriated, must be prosecuted for by the county attorney of the proper county, the moneys recovered to be paid to the county treasurer, for the use of the general fund of the county.

2137. (§ 3432.) *Action on bond.*—Any one aggrieved or damaged by an act of an auctioneer, in violation of or contrary to the provisions of this chapter, has an action against him and his bondsmen on his official bond therefor.

CHAPTER XXIV.

DAMS AND RESERVOIRS.

- Section 2138. Dams and reservoirs, how constructed.*
 “ 2139. *Must be constructed in a substantial manner.*
 “ 2140. *Complaint, and persons appointed to examine dams and reservoirs.*
 “ 2141. *Examination and report.*
 “ 2142. *Report, what to contain.*
 “ 2143. *If dam insecure, proceedings.*
 “ 2144. *Issues and trial.*
 “ 2145. *Judgment.*
 “ 2146. *New trial and appeal.*
 “ 2147. *Water may be drawn off pending an appeal.*
 “ 2148. *Board of county commissioners may appoint experts to examine dam.*
 “ 2149. *Compensation of experts.*
 “ 2150. *Duty of board when complaint filed.*
 “ 2151. *Penalties.*

2138. (§ 3440.) *Dams and reservoirs, how constructed.*—No person must fill or procure to be filled with water any reservoir which is not so thoroughly and substantially constructed as to safely hold any water that may be turned therein.

2139. (§ 3441.) *Must be constructed in a substantial manner.*—No person must construct or cause to be constructed a dam or reservoir for accumulating water except in a thorough, secure and substantial manner.

2140. (§ 3442.) *Complaint, and persons appointed to examine dams and reservoirs.*—Upon complaint on oath, made by any person and filed in the district court, that a person is filling or proposing or threatening to fill with water a reservoir, or has filled or gathered water in a reservoir, and that life and property are endangered, the judge must appoint three persons of the county in which such reservoir is situated, one of whom must be a mining or civil engineer, if possible, each of whom must take an oath that he will examine the dam and reservoir to determine as to its security, to the best of his ability.

2141. (§ 3443.) *Examination and report.*—It is the duty of the person so appointed to make a thorough examination of the dam or reservoir, and if upon examination they find that persons or property are endangered by reason of the dam or reservoir, and it is not secure against the pressure of the water confined therein or the water that may be confined therein, or against rains and freshets that may occur, and if they find that the same is secure against the occurrence of the casualties mentioned, or any of them, they must make a report in writing to the judge, which must be entered of record as a proceeding in court.

2142. (§ 3444.) *Report, what to contain.*—If, upon such examination as to the safety of such reservoir, they consider such reservoir insufficient and insecure, they must further inquire whether the danger to be apprehended is imminent, and if they are of the opinion that such danger is imminent, and that destruction of life or property may result from delay, it is their duty forthwith to draw from such reservoir the waters therein, or so much thereof as will insure safety, and they must make return of their action to the judge; and in the discharge of such duties the persons so acting are peace officers.

2143. (§ 3445.) *If dam insecure, proceedings.*—If, upon examination, they are of opinion that such dam or reservoir is insecure and insufficient, but that the danger therefrom is not immediate or imminent, they must so state in their report to the judge, who must thereupon cause a copy of the report to be served on the owner or person in charge thereof, with a notice requiring him to make the same secure, or to draw the water therefrom without delay; and unless such order is complied with after hearing, the judge may order the sheriff to draw from said dam or reservoir the waters thereof.

2144. (§ 3446.) *Issues and trial.*—The owner of the dam or reservoir may answer the complaint and an issue may be joined at the hearing and the question of the security and sufficiency of the dam or reservoir may be tried before the court or jury as in other cases.

2145. (§ 3447.) *Judgment.*—If the jury find the dam or reservoir insufficient or insecure, judgment must be entered thereon, declaring such dam or reservoir a nuisance and that all the water be drawn therefrom. Costs may be taxed as in other cases to the losing party.

2146. (§ 3448.) *New trial and appeal.*—Any party to the proceedings may move for a new trial and appeal as in other cases.

2147. (§ 3449.) *Water may be drawn off pending an appeal.*—The judge may, after the verdict of the jury and pending an appeal, order that the water be drawn from the reservoir so as to make the same secure and safe until the final determination of the proceedings.

2148. (§ 3450.) *Board of county commissioners may appoint experts to examine dam.*—Whenever any person is constructing a dam or reservoir, and complaint is made to the board of county commissioners that the same is being built in an insecure and unsafe manner, and dangerous to life or property, or that when constructed will be insecure and dangerous, it is the duty of the board to appoint three experts under whose supervision the dam or reservoir must be constructed, and such reservoir must not be filled with water, nor shall any water be

allowed to flow therein until the owner thereof has filed in the office of the county clerk a certificate, signed by a majority of the persons so appointed, to the effect that such dam or reservoir is constructed in a proper manner and is safe and secure.

2149. (§ 3451.) *Compensation of experts.*—The persons acting as experts are entitled to a reasonable compensation for their services, to be allowed by the board and paid by the owners of the dam or reservoir.

2150. (§ 3452.) *Duty of board when complaint filed.*—Whenever such complaint is made to the board of commissioners it is the duty of the board, in case such dam or reservoir is not being constructed in a safe and secure manner, to proceed against the owner or persons constructing the same in the manner provided for in this chapter, and any person may file a complaint and proceed against any such owner of or person constructing such dam or reservoir, as provided in this chapter.

2151. (§ 3453.) *Penalties.*—Any person violating any of the provisions of this chapter is punishable as provided in § 8563 (722) of the Penal Code and if death ensue by reason of any of the acts prohibited by this chapter, the person guilty of the same may be convicted of murder, manslaughter or any other felony as the case may be.

TITLE VIII.

THE PUBLIC LAND OF THE STATE.

- CHAPTER I. GENERAL REGULATIONS FOR THE SALE AND DISPOSITION OF STATE LANDS.
- II. TIMBER LANDS.
 - III. SELECTION OF SCHOOL LANDS.
 - IV. REGISTER OF STATE LAND OFFICE.
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CHAPTER I.

GENERAL REGULATIONS FOR THE SALE AND DISPOSITION OF STATE LANDS.

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2152. (§ 3470.) *The state board of land commissioners, how composed.*—The governor, the superintendent of public instruction, the secretary of state, and the attorney general constitute the state board of land commissioners, which has direction, control, and power to lease or sell any of the school lands of the state, and the lands granted, or which may hereafter be granted for separate and various state educational institutions under the regulations provided in this title.

State v. Barret, 26 Mont. 65; 66 years, and the revenues therefrom paid
 Pac. 506. All agricultural and grazing to the state treasurer.
 lands, in default of sale, may be leased
 under the direction of the state land
 commission for terms not exceeding five
 State v. Rice, 33 Mont. 393; 83 Pac.
 878.

2153. (§ 3471.) *Duties.*—It is the duty of the board to provide for the selection, leasing, sale, or other disposition of all lands heretofore or which may hereafter be granted to the state of Montana by the United States or otherwise, under such regulations as may be prescribed by law, and in such manner as may secure the maximum possible amount provided therefor. No land heretofore granted the state must be sold for less than ten dollars per acre, but where land is not worth such sum, it may be leased for a term not exceeding five years, and at a rental to be determined by the board.

2154. (§ 3472.) *Same.*—The governor is president of the board, and the superintendent of public instruction is the secretary, and the meetings of the board may be regulated by such rules as the board adopts. The board must keep a record of its proceedings in a book kept for that purpose, and must preserve all papers and documents submitted to it. The board must designate what lands selected by the state shall be assigned to each specific fund, designated in grants made by the United States, and keep all maps, plats, books, records, documents and papers pertaining to the office, subject at all times to inspection by the public. The board must be furnished by the state with all necessary blanks, books and stationery, and all the necessary expenses

attending the examination, survey, location and sale of state lands must be paid on the warrants of the auditor issued on vouchers certified by the state board after being allowed by the board of examiners.

2155. (§ 3473.) *Must provide maps and plats, and classify lands.*—The board must provide as complete a set of plats for field use as may be necessary of the surveyed lands of the state together with such blanks as may be necessary for the examination of said lands; must ascertain what part of the unappropriated government lands in the state are capable of irrigation, and the sources and reliability of the supply of water for the same; and must select what lands may be suitable under the various grants made by the United States to the state, and must classify the lands upon the maps and plats so prepared, according to the classification made by the constitution of the state of Montana, to-wit:

1. Grazing lands.
2. Timber lands.
3. Agricultural lands.
4. Lands lying within the limits of any town or city, or within three miles of such limits, and the board must as often as once in five years, re-classify the lands, so that at no time must any of the lands be sold under a different classification from that to which they belong.

2156. (§ 3474.) *Lands and funds to be marked on map.*—The maps and plats prepared by the board, as above provided, must also contain a classification of the lands according to the respective funds or state institutions to which said lands belong, and must be marked upon maps and plats with the name of the fund to which they belong; and it is the duty of the board to select or cause to be selected, lands in lieu of those settled upon, and disposed of by the United States in sections 16 and 36; the lands selected to be as contiguous as possible to the section in lieu of which the same is taken, and such selections so made of lieu lands must be certified to the register and receiver of the proper United States land office by the board.

2157. *Reappraisement every five years.*—The Board may if in its judgment it is necessary cause all land held in trust by the State, to be reappraised by the State Land Agent or his assistants once every five years and whenever complaint shall be made to the State Board of Land Commissioners by at least ten householders of any school district, in which State lands are situated, that such lands or any portion thereof are appraised too high or too low, the Board shall, by an order entered upon their minutes, direct the State Land Agent to reappraise such lands, and if upon such reappraisement, the Board is satisfied that such lands are appraised too high or too low the Board may value the same at their real

value and enter the same in their books of record. *Provided, however,* that said Board may at any time of their own motion by an order entered of record, direct the State Land Agent to re-appraise any part or portion of the State Lands in any county in the State. *Provided* that such reappraisement shall not take effect until the lands affected thereby are regularly advertised and offered for sale or lease as hereinafter directed; and *Provided, further* that whenever any lot or tract of land has been put up for sale or lease and no bids have been received for same and no application be made for the purchase or leasing within a reasonable time, the Board may, if in its opinion the appraisal was too high reduce the same, but such reduction must not exceed ten per cent in any one year. [Act approved March 1, 1899.] (6th Sess. 87-8.)

2158. *Selection by legal subdivisions. Limit to selections.*—All selections of land must be made in legal subdivisions, and when the selection has been made and approved by the board, the Governor must take the necessary steps to procure the approval of the Secretary of the Interior, and the issuance of patents for the same by the United States to the State of Montana; *Provided*, that not more than 200,000 acres shall be selected in any one county of the State, unless it shall satisfactorily appear to the State Board of Land Commissioners that no lands can be selected in those counties of the state wherein a less quantity than 200,000 acres have been selected. [Act approved March 6th, 1897.] (5th Sess. 193.)

Note.—Section not mentioned in title of act.

2159. *Limit of selection of state lands.*—That no further selections of any indemnity school land or of any land for any of the state institutions of learning, or for public buildings, shall be made in any county in which the state has already selected one hundred thousand (100,000) acres, or more, of land in the aggregate for such purposes. [Act February 27, 1907.] (10th Sess. Chap. 50.)

2160. (§ 3477.) *Books to be made showing character of land.*—When the lands have been selected for the respective purposes mentioned in the act of congress approved February 22, 1889, granting lands to the state of Montana, and the title of the same assured to the state, the board must cause to be prepared a complete set of maps and plats, which must be of a permanent character, and must also prepare a set of books showing the character of the soil, grass, timber, water, the source and supply of water for irrigation, the presence of stone, lime, or any useful mineral production, and in general all facts that may affect the value of the lands, and showing on the plats which lands have been selected under each specific grant of the United States, and for what particular purpose the same are selected, and also

whether the lands belong to subdivisions 1, 2, 3, or 4, of § 1, of article XVII., of the constitution of the state, and when any re-classification of said lands is made the plats and books must be changed to show the re-classification.

2161. *Sale of lands.*—The Board may from time to time direct that the lands belonging to the State be offered for sale and lease at public auction to the highest bidder, such sale and leasing to be conducted by the Register of the State Land Office, and held at the Court House of the county wherein such land is situated. Each quarter section or such portion thereof as belongs to the State shall be offered for sale separately. Smaller lots only must be sold when it is impossible to sell as above described or when thereby a larger price will be obtained, but not more than one hundred and sixty acres shall be sold to one person, *Providing* that in grazing lands more than one hundred and sixty acres may be sold if the sale of only one hundred and sixty acres would, in the judgment of the State Land Register, work an injury to the other portion of the section or lessen it in value, and no lands shall be sold for less than ten dollars per acre nor for less than its appraised value, and the amount of the purchase money to be paid at the time of the sale shall be not less than thirty per cent of the whole amount. Except that in the case of timber lands the whole of said amount shall be paid. [*Act approved March 1, 1899.*] (6th Sess. 88.)

2162. *Lease of lands not sold.*—Each tract of land for which no bid for its purchase has been received shall be immediately offered for lease to the highest bidder by quarter sections, or so much thereof as belongs to the State in the case of lands classified as agricultural, and by sections in the case of lands classified as grazing, and smaller tracts shall not be leased unless it is deemed impossible to lease as above described, or when a larger price will be obtained thereby, and no lands shall be leased for a longer period than five years nor for less than the minimum rental fixed by the Board, which shall not be less than five per cent per annum of the appraised value of such lands, *Provided* that no lands, already under lease, shall be offered for sale or lease unless such lease expired within three months from the date of the offering. [*Act approved March 1, 1899.*] (6th Sess. 88.)

2163. *Payment of purchase price or rental.*—Within twenty-four hours after such sale, the purchaser of each lot or tract shall pay to the Register of the State Land Office the amount of the first payment, and shall execute a bond conditioned for the payment of the balance of the purchase money to the State of Montana in fourteen equal annual payments, with interest at the rate of five per cent. per annum. And each lessee shall, within a like period, pay to the Register the first year's rental, and shall deliver to him a good and sufficient bond, executed by said lessee and two

sureties, the amount of whose taxable property shall be certified by the county clerk and recorder of the county wherein their property is situated, the condition of which bond shall be that each lessee will keep and perform all covenants and agreements contained in his lease, and the Register shall, upon such payment and the delivery of such bond, execute and deliver to such purchaser or lessee a certificate of purchase or lease, as the case may be. If any purchaser or lessee refuses or neglects to make such payment or deliver his bond as above provided, he shall forfeit the sum of one hundred dollars with costs of suit, and the Attorney General shall institute a suit for the recovery thereof in the name of the State of Montana. [*Act approved February 25th, 1903.*] (8th Sess. Chap. 28.)

State v. Missoula Co., 21 Mont. 591; 55 Pac. 359. The purchaser is the owner, for the purpose of taxation, after he has

entered into possession of the lands, paid a portion of the price, and contracted to pay the balance.

2164. *Publication of descriptive lists.*—The Register, previous to every public sale and leasing shall prepare a list descriptive of each lot, tract or parcel of land to be offered, which shall state the time, place and conditions of such sale and leasing which list shall be published once a week for at least four weeks prior to the date of sale in a newspaper of general circulation published in the county wherein the land is situated. [*Act approved March 1, 1899.*] (6th Sess. 89.)

Courtney v. Missoula Co., 21 Mont. 591; 55 Pac. 359.

2165. *Patents.*—All patents and certificates of purchase shall be executed in the name of the State of Montana by the Register of the State Land Office, and shall be approved and countersigned by the President and Secretary of the State Board of Land Commissioners, and shall be entitled to be recorded without acknowledgment. [*Act approved March 1, 1899.*] (6th Sess. 89.)

Courtney v. Missoula Co., 21 Mont. 591; 55 Pac. 359.

2166. *Final payment and settlement.*—Whenever a purchaser or his assigns shall have paid the whole of the money payable to the State of Montana upon his certificate of purchase, it shall be the duty of the Register to cancel the bond executed by the purchaser, and to execute letters patent for the lands described to him or his assigns, and such purchaser may obtain patent at the time of making any annual payment, by paying the balance of principal in addition to the amount due at such time, and if the purchaser, desire to make settlement at any other time, such settlement will be made as if it were on the date of the next annual payment. [*Act approved March 1, 1899.*] (6th Sess. 89.)

2167. *Purchasers may assign certificates.*—All purchasers may assign their certificate of purchase and all assignments of certificates of purchase must be in writing and shall be acknowledged in the same manner as other conveyances of real estate,

and shall be filed for record in the State Land Office. [*Act approved March 1, 1899.*] (6th Sess. 89.)

2168. *Default in payments.*—In case any payment of principal or interest upon any purchase shall be overdue for a period of six months, the certificate of purchase may, at the election of the Board of Land Commissioners, acting for the State, be cancelled, and all rights of the purchaser be declared forfeited, and the State shall be released from all obligations to convey the land and such purchaser shall, upon thirty days notice by the Register, surrender said premises and the right of possession shall revert to the State of Montana. *Provided*, the Register of the State Land Office, may, as he deems advisable, upon a satisfactory showing, extend the time of payments on contracts heretofore issued and those to be issued under this Act. [*Act approved March 1, 1899.*] (6th Sess. 90.)

2169. (§ 3486.) *Board to hear and determine claims.*—The board may hear and determine the claims of all persons to any land owned by the state, and has the power to establish such rules as may be proper to prevent fraudulent applications under this chapter.

2170. *Taxation of contracts.*—It shall be the duty of the Register of the State Land Office on the first Monday in March in each year to prepare and transmit to the assessors of each county a certified list of the lands that may have been sold by the State, giving a description thereof, by legal subdivisions or lots and blocks together with the name of the purchaser and amount of principal paid to said date. *Provided* the purchaser shall not be assessed upon his contract for an amount greater than that paid by him, and *provided further*, that in case the taxes become delinquent, the interest only of said purchaser shall be sold therefor at the delinquent tax sales. [*Act approved March 1, 1899.*] (6th Sess. 90.)

2171. *Execution of leases. Rentals payable in advance.*—All leases shall be in duplicate, both to be signed by the lessee and by the Register of the State Land Office on behalf of the State, with the seal of the Register attached thereto; the original lease to be delivered to the lessee and the duplicate to be kept in the State Land Office. All rentals shall be paid annually in advance to the Register, who shall issue receipts in duplicate for all payments received by him from any source, forwarding the original to the person making the payment and retaining the duplicate in his office. All receipts issued shall be numbered consecutively. [*Act approved March 1, 1899.*] (6th Sess. 90.)

2172. *Register must keep records. Forfeiture for non-payment.*—The Register shall keep a full and complete record of all leases and certificates of purchase issued by him and payments made thereon and shall on the first of every month notify all

persons who may become delinquent, and in case any lessee becomes delinquent more than sixty days after notice, the Register shall forthwith, unless an extension of time has been granted by him, declare a forfeiture of the lease, and may eject the lessee from the land, but such forfeiture and ejectment shall in no way release the bond heretofore provided for, but the sureties thereon, upon the forfeiture of such lease shall have the right upon the payment by them, without suit, of their obligation, to have the lease transferred to them for their own use and benefit, upon the records of the State Land Office, in place of the lessee. [Act approved March 1, 1899.] (6th Sess. 90-1.)

Clemmons v. Gillette, 33 Mont. 330; 83 Pac. 881.

2173. *Private sales or leases of unsold lands.*—Whenever any State lands have been exposed for sale and lease at auction, any lots or tracts remaining unsold or unleased, the Register may sell or lease them to any person thereafter making application therefor, subject to the same terms and conditions as though the applicant were the successful bidder at a public sale and leasing. *Provided*, That all sales under the provisions of this section, to be valid shall require the approval of the Board. [Act approved March 1, 1899.] (6th Sess. 91.)

2174. *Right to re-lease lands.*—The lessee of State Lands who has fully complied with the terms of his lease, shall have a preference right to re-lease any of such lands at the expiration of his lease, in the following manner: He shall make a written application under oath, certifying as to the character and value of the improvements placed thereon, and the amount bid for the re-lease of the same, which bid shall be accepted, if deemed sufficient and for the best interest of the State, by the Register, who shall, upon the receipt of the first year's rental, issue a new lease to such bidder as in other cases. *Provided*, that if there are other offers made for the re-lease of the land, the old lessee shall have the right to lease the land at the highest bid offered. *Provided, further*, that in case the land is offered for sale or lease at public auction, the old lessee need not make a higher bid than others, but shall if bidding an equal amount be given the preference. [Act approved March 1, 1899.] (6th Sess. 91.)

2175. (§ 3492.) *Moneys received must be invested for benefit of fund.*—All moneys arising from the sale of state lands must be paid to the state treasurer and be invested by him for the benefit of the fund to which they may belong in the securities prescribed by this chapter. And all payments of money made to the state treasurer must be accompanied by a statement as to what fund said money shall be credited.

2176. *Water rights.*—At any time during the existence of a lease the lessee may, with the consent of the Board first obtained, by written application showing the cost and benefits to

be derived thereby, purchase or acquire a water right in order to irrigate the land leased by him, and if such water right shall become a valuable and permanent improvement, then, in case of the sale or lease of such lands to other parties, the old lessee shall be entitled to receive the value thereof as in case of other improvements which he may place upon said land. [*Act approved March 1, 1899.*] (6th Sess. 91.)

2177. *Appraisal of improvements.*—Whenever any lessee of state lands having improvements thereon fails to renew his lease and the land is purchased or leased by others, he shall be entitled to receive from the purchaser or the new lessee the appraised value of the improvements placed by him thereon, which improvements shall include only the buildings, fencing, a well and water or irrigation ditches, except in case the lessee has, by consent of the Board, entered upon its minutes, cleared the land, in which case the stipulated cost of the clearing may be added and the Register shall not issue certificate of purchase, or new lease, as the case may be, until the old lessee has been paid the appraised value thereof, or has elected to remove them; *Provided however*, that the original lessee may elect to accept the appraised value of the improvements or remove them, within ninety days from the expiration of his lease. [*Act approved March 1, 1899.*] (6th Sess. 91-2.)

2178. *Disposal of improvements.*—All lessees having improvements on State lands and who do not wish to re-lease the same, have the privilege of, disposing of, or removing such improvements as are capable of removal without damage to the land, at any time within ninety days from the expiration of their lease, after which period all that remain shall become the property of the State, unless such period be extended by the Register for good cause shown. [*Act approved March 1, 1899.*] (6th Sess. 92.)

2179. *Duties of County Attorneys.*—It is hereby made a part of the official duties of the County Attorneys of the several counties, at the direction of the Board, to prosecute all actions in their respective counties, upon the bonds given by lessees or purchasers under the provisions of this Act, or for the recovery of the possession of any State lands, or for their use and occupation. [*Act approved March 1, 1899.*] (6th Sess. 92.)

2180. *Wrongful fencing or occupancy.*—Any person who shall fence or occupy any State lands without legal right, after the same shall have been appraised and offered for sale or lease, is liable for, and shall pay to the State of Montana, for the benefit of the fund to which that land belongs, treble the amount of the rental fixed by the Board of Land Commissioners for said land, and suit shall be brought in the name of the State of Montana for recovery thereof. [*Act approved March 1, 1899.*] (6th Sess. 92.)

2181. *Reappraisement of school lands.*—From and after the passage of this Act any fourth class public school lands as classified, or subject to classification by the State Board of Land Commissioners as provided in Article XVII, Section 1, of the Constitution of the State of Montana; within the State may be re-appraised in the following manner. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 98.)

2182. *Petition.*—Whenever a petition signed by not less than twenty-five (25) bona fide residents of one and the same section of the said fourth class public school lands of the State of Montana, shall be presented to the State Board of Land Commissioners, praying for the re-appraisement of any of the land of the section in which such petitioners reside, it shall be the duty of the said Board of State Land Commissioners within thirty days thereafter to order and require the State Land Agent to re-appraise such lands. Such petition shall correctly describe the lands which the petitioners pray to be re-appraised. [*Act approved March 4th, 1897, § 2.*] (8th Sess. 98-9.)

2183. *Time of appraisement.*—Within ten days thereafter the said State Land Agent shall proceed to re-appraise and fix the valuation of said lands and report such re-appraisement to the State Board of Land Commissioners within twenty (20) days thereafter. [*Act approved March 4th, 1897, § 3.*] (5th Sess. 99.)

2184. *Approval of appraisement.*—If such re-appraisement shall be approved by the State Board of Land Commissioners then said values as re-appraised by the said State Land Agent shall constitute the true value of such lands, and shall also be the basis of value upon which the said lands shall be hereafter sold. [*Act approved March 4th, 1897, § 4.*] (5th Sess. 99.)

2185. *Credit on contracts when value reduced.*—If on such re-appraisement the valuation of the lands or any portion thereof shall be less than the valuation fixed by the previous appraisement any person or persons holding any of the said lands under certificate of sale from the State of Montana, whose contract or contracts have not been forfeited shall receive a credit on such contracts to the amount of the difference of such valuation fixed by the re-appraisement and the valuation fixed by the previous appraisement; *Provided, however*, that the State shall not be required to repay any money to any person or persons who may have made payments to the State under the terms of such contracts previous to such re-appraisement. [*Act approved March 4th, 1897, § 5.*] (5th Sess. 99.)

2186. (§ 3499.) *Certain officers forbidden to purchase or lease.*—It is unlawful for any member of the state board of land commissioners, or of the county commissioners, county superintendent of common schools, or any persons appraising lands, or in the employ of the state for the selection, appraisal, sale or

leasing of the state or school lands, to purchase or lease, directly or indirectly, any portion of the lands of the state.

2187. (§ 3500.) *Lands adjacent to city or town, how sold.*—Any state lands, situated in, or adjacent to, a city or town, may be surveyed or laid off in lots or blocks, streets, alleys, avenues, highways, or public squares, to conform to the legal subdivisions of such city or town, and the state board of land commissioners must cause correct maps and plats of such lands to be made and recorded; when so surveyed and platted, and not otherwise, the board may, in its discretion, sell the same at public auction to the highest bidder. Each block or lot as numbered or platted upon the maps must be sold separately, and not until they have been appraised, and notice of the sale given in the same manner as prescribed in this chapter, and such sale must be made upon the same terms as provided in this chapter for the sale of other school lands.

2188. (§ 3501.) *Owner of improvements may remove same.*—Any person who, by affidavit or otherwise, shows to the board that he has a right to the improvements of any such lot or tract of land in good faith for the purpose of making for himself a home, has the preference right to purchase said lot or tract of land. The same must not exceed five acres in area, and at the highest price bid for said lot or tract of land by any other person.

2189. (§ 3502.) *Duty of county superintendent to report condition of school lands.*—It is the duty of the county superintendent of schools to report to the board, whenever required, the condition of the school lands in his county, showing the amount thereof, whether any part of the same is occupied and by whom; and it is the duty of the board to ascertain the amount of such lands occupied and rightfully held under any laws of the United States by occupants thereof, and to make a selection of other lands in lieu thereof for the support of the public schools.

2190. (§ 3503.) *Right of way may be granted through state lands, how.*—In any case where lands heretofore or may hereafter be purchased by, or donated to the State of Montana or may be purchased by, or may have been donated to the territory of Montana, and the state of Montana remains the owner thereof, either for the erection of public buildings or other purposes, and it is deemed expedient to grant a right of way over and upon such lands, the governor and secretary of state are hereby authorized to execute and sign on behalf of the state a proper deed or other instrument of writing therefor. If the owner of said land adjoining any such state land desires to lay out and subdivide any of his land into an addition to any city or town, and if the board desire to subdivide any of the state lands adjoining into any addition to any city or town the governor and secretary of state

are authorized to execute the proper conveyances or other papers and join in the execution of a plat of such addition for the purpose of granting a right of way over and upon such lands.

2191. (§ 3504.) *Alternate lots may be sold, in town additions.*—The board must not sell lands subdivided or platted, or subdivided as an addition to any town, except in alternate lots containing five acres or less, and not more than one-half of any one tract of land subdivided and made an addition to any town, must be sold prior to the year 1910, but the other lots, tracts or parcels of land which have been subdivided, platted and surveyed as an addition to any town, may be leased under such terms and restrictions as may be prescribed by the board.

2192. (§ 3505.) *Reports.*—The board must annually, on or before the first Monday of November in each year, publish a full report of its transactions, showing the amount of lands belonging to the state, to what fund they belong, their value and the amount sold or leased during the year; and biennially must make a like report to the legislative assembly.

2193. *Gifts or devises to state.*—The State Board of Land Commissioners are hereby empowered to accept, in the name of the State of Montana, by deed of sale or a gift, or by the operation of law, any lands of whatsoever nature, and said lands shall be appraised, managed, leased or sold in the same manner, as is prescribed herein for granted lands, and the proceeds of the lease or sale of all such lands shall be turned into the general school fund in the manner prescribed by law, or shall be applied to such specific purpose as may be designated by any grantor or testator. [Act approved March 1, 1899.] (6th Sess. 93.)

2194. *Right of way for public road.*—Right of way may be granted by the Board of Land Commissioners over public lands to any county or city desiring to construct a public road across the same, *Provided*, that a duly attested and sworn copy of the official plat, made by the official county or city surveyor or engineer, shall first be filed with the Board, together with a petition from the county or city officials setting forth the reasons for the same, and the aforesaid plat, when approved by said Board shall be and form the official plat of said road, and the said plat shall show the amount of land taken up by the proposed road, and shall show the remainder of land in each portion of each legal subdivision bisected by said proposed road, and said plat shall be retained in the State Land Office. [Act approved March 1, 1899.] (6th Sess. 93.)

2195. *Errors or mistakes in deeds.*—That the Governor of the State of Montana is hereby authorized, empowered and directed to correct, and cause to be corrected, any and all errors, mistakes and misdescriptions, in any and all deeds, and conveyances of property to the State of Montana, for the use and benefit of the

public institutions of the State. And in order to carry into effect the provisions hereof, the Governor as aforesaid, is hereby authorized, directed and empowered to make any and all necessary and proper deeds or conveyances for and on behalf of and in the name of the State of Montana, which may be by him found necessary in order to correct any errors, mistakes and misdescriptions above referred to. [*Act approved February 28th, 1899.*] (*6th Sess. 123.*)

2196. *Investment of permanent school and university fund.*—All moneys belonging to the Permanent School and Permanent University Funds must be invested:

1st. In bonds of the State of Montana or of the United States.

2nd. In interest bearing warrants upon the general fund of the State.

3rd. In such bonds of the several counties and cities of the State as the Board deems most safe and secure.

4th. In bonds of school districts within the State of Montana, *provided*, that before any such moneys are so invested, the Board must be satisfied that the bonds, so to be negotiated, are the only bonds issued by the school district, and that the outstanding indebtedness of such district, does not exceed, three per cent upon valuation of the property within it.

5th. Bonds of the several institutions of the State of Montana issued under the authority of the State, and secured by their respective land grants. [*Act approved March 1, 1899.*] (*6th Sess. 92-3.*)

2197. *Investment of funds.*—That the State Board of Land Commissioners is hereby authorized and required to invest and keep invested all moneys belonging to the Permanent School Fund, Permanent University Fund, and Permanent Agricultural College Fund in any State, County, City or School District Securities of this State, or in any Bonds now issued, or to be hereafter issued against any of the State Land Grants which in its judgment is a safe investment. The Board may make its bid in the same manner as private persons and under no restrictions other than those imposed upon private persons seeking investment therein. [*Act approved February 21st, 1903, § 1.*] (*8th Sess. Chap. 12.*)

2198. *Payment for securities purchased.*—Whenever the Board has purchased any securities as provided in section 2197 (1) of this Act and the same are duly executed and delivered to the President of the Board, the Board shall direct the State Auditor to draw his warrant upon the State Treasurer for the amount thereof, specifying the Fund upon which and the person in whose favor the said warrant shall be drawn, whereupon the State Auditor shall draw a warrant upon the State Treasurer accordingly, which warrant shall be delivered to the President of

the State Board of Land Commissioners and shall be paid by the State Treasurer upon the delivery to him of the purchased securities; *provided* that the State Treasurer shall purchase interest bearing warrants issued against any Fund whenever ordered so to do by the State Board of Land Commissioners, and the State Treasurer is hereby required to render a statement monthly to said Board of the amount of interest bearing warrants in each Fund. [*Act approved February 21st, 1903, § 2.*] (*8th Sess. Chap. 12.*)

2199. *Officers in charge of bond sales to give notice to Board.*—It shall be mandatory upon the officers in charge of County, City and School District Bond Sales to give the State Board of Land Commissioners, at least thirty days prior to the date of such sales, a copy of the advertisement thereof, also full and complete proof of the proceedings had with reference to the issuance of said bonds, with the opinion of the County Attorney as to the legality thereof, together with a certificate showing the amount of taxable property in and the amount of indebtedness against such county, City or School District and upon request shall furnish such other information as said Board may require, and any failure to comply herewith shall be deemed a misdemeanor punishable by a fine of not less than One Hundred (\$100.00) Dollars or more than One Thousand (\$1,000.00) Dollars, and the County Attorney of the proper County, upon request of the State Board of Land Commissioners, must prosecute any officer for violating this section. [*Act approved February 21st, 1903, § 3.*] (*8th Sess. Chap. 12.*)

2200. *Investment of bond fund.*—Whenever in the opinion of the State Board of Land Commissioners any part of the University Bond Fund created by the Act entitled An Act to provide for the erection, completion, furnishing and equipment of Buildings for the University of Montana, approved March 4, 1897, may be safely invested in any good public securities at an interest of not less than four per centum per annum and the revenue derived from the sources named in said Act and the amount said Board may reserve in said fund will in its opinion be sufficient to pay interest on the bonds provided for in said Act and the interest on the bonds provided for in any other Act of the Legislative Assembly of Montana said Board is hereby authorized so to do. In making bids or offers to invest said fund in such securities the said Board may conduct its proceedings in the same manner as private persons seeking investment therein and if the character of the securities will in its judgment warrant offer a premium therefor. The securities purchased shall become payable before or at the date the first issue of said bonds become payable out of said University Bond Fund. The revenue so received and said securities shall constitute a part of said Bond Fund. [*Act approved March 16th, 1901.*] (*7th Sess. 17-18.*)

2201. *Redemption of bonds held by state.*—That the Bonds of any County, School District, City or Town of this State, now held or hereafter acquired by the State, shall be subject to redemption before maturity, whenever such County, School District, City or Town in the State shall have accumulated a sinking fund in the sum of Five Thousand Dollars (\$5,000), or more, for the purpose of paying its bonds. [*Act approved February 25, 1907, § 1.*] (*10th Sess. Chap. 33.*)

2202. *Same.*—The Board of Land Commissioners of this State shall permit any County, School District, City or Town, to redeem its bonds in sums of not less than Five Thousand Dollars (\$5,000), before maturity of such bonds, upon giving to the said Board of Land Commissioners, at least three months notice of its intention to redeem and pay such bonds, and upon payment thereof as herein provided, said bonds shall be delivered to such County, School District, City or Town for cancellation. [*Act approved February 25, 1907, § 2.*] (*10th Sess. Chap. 33.*)

2203. (§ 3511.) *Duty of land commissioners to replenish funds.*—It is hereby made the duty of the state board of land commissioners, at any time that it may be necessary, to replenish any state land grand fund, i. e., any fund by whatsoever designated, heretofore created, or that may hereafter be created by law, deriving its revenue solely from public lands granted by the United States to the state of Montana, against which fund warrants may have been drawn or bonds issued, on which warrants the yearly interest is about to mature, and for the payment of which no moneys or insufficient moneys are on hand or will be on hand to the credit of such respective fund, to lease or sell at not less than the minimum price per acre that now is or may be hereafter by law provided for the class of lands devoted to such respective fund or funds, enough of the land devoted to such respective fund or funds, and from the proceeds of which such fund is to be replenished, to raise sufficient moneys from time to time to pay the interest so maturing on such warrant or warrants, bond or bonds; such leasing or sale to be conducted in the same manner as is now or may be hereafter by law provided, generally, for the sale or leasing of land of the same respective class or grant. [*Act approved March 13, 1895.*]

2204. (§ 3512.) *Payment of interest.*—The interest on all land grant warrants shall be first payable on the first day of July next succeeding the date of issuance, and annually thereafter. And after the realization of sufficient moneys in the respective funds in the manner by § 2203 (3511) herein provided, the treasurer shall cause to be published a brief notice that the interest on the particular warrants on which interest would be payable on July 1st (describing them by the numbers and names of fund) will be forthwith payable, and on presentation of any

such warrant on or at any time after July 1st the treasurer shall pay the interest thereon, indorsing the date of payment and amount paid on the back of each warrant, redelivering the same to the holder. And he shall keep a register showing the dates and amounts of each interest payment on each warrant, in each fund; and also showing similar data as to paid and canceled interest coupons on any land grant bonds. [*Act approved March 13, 1895.*]

2205. (§ 3514.) *Expenses, how paid.*—The expense of selecting, platting, leasing and sales of all lands shall be paid by the treasurer on warrants issued by the auditor, on vouchers certified by the state board of land commissioners that the said expenses were necessary and actually incurred in the selection, location, platting, leasing and the sales of land selected and set apart for the several state institutions, and shall be paid out of the moneys received from such sales, and the state board of examiners in approving the same shall designate the particular fund out of which said expenses shall be paid. [*Act approved March 13, 1895.*]

2206. (§ 3515.) *Who are guilty of perjury.*—Every person appointed to select and appraise any state lands, who wilfully and knowingly makes a false return of any survey or any appraisal of the value of land at variance from the true value thereof, or without having personally surveyed and examined the same, is punishable as provided in § 8234 (240) of the Penal Code.

2207. (§ 3516.) *Penalty for trespass or injury to state land.*—Every person who commits a trespass on or injury to any of the lands of the state, or the improvements thereon, is punishable as provided in § 8773 (1076) of the Penal Code. It is the duty of the county superintendent of common schools to report to the proper officer all offenses committed in his county relating to the public lands of the state.

2208. (§ 3517.) *Purchaser liable for waste.*—If any purchaser of land, before receiving his title in fee simple therefor, cuts or destroys any timber upon said land, more than may be necessary for the building and repair of fences and houses on the land, or for fuel for the family of the occupant, he is liable to pay the amount of damages done to the land, to be recovered in an action in the name of the state, to be instituted by the attorney general, or the county attorney of the county in which the land is situated.

2209. (§ 3518.) *Fines and forfeitures, into what fund paid.*—All moneys received for fines, fees and forfeitures under this chapter must be paid to the state treasurer, and by him placed to the credit of the fund to which it belongs.

2210. (§ 3519.) *Meaning of lands of state.*—The words, “public lands of the state,” mean all lands granted to the state

by the United States for the support of common schools, including sections 16 and 36 of every township and sections granted in lieu thereof, and all lands granted for educational and reformatory institutions and for public buildings at the seat of government of the state, and such other lands as may be hereafter granted to the state by the United States or by any person, and all lands of which the state may become the owner by operation of law.

2211. *Sale of irrigable lands.*—That for the purpose of co-operating with, and aiding in the construction of works by the United States Government for the irrigation and reclamation of arid lands, all lands now or hereafter owned by the State of Montana and designated as irrigable under any existing or proposed national irrigation system in Montana, shall be disposed of in farm units, as fixed by the United States, and subject to all limitations and conditions of an Act of Congress entitled, "An Act Appropriating receipts from the Sale and Disposal of Public Lands in Certain states and Territories to the Construction of Irrigation works for the Reclamation of Arid Lands," approved January 17, 1902, and all Acts amendatory thereof, and no title to such lands shall pass from the State until such conditions and limitations have been complied with, nor until the purchaser shall produce evidence of the acquisition of the right to the use of water for the irrigation of such lands duly issued by the United States Government, and all such lands not sold prior to the time when water is ready for delivery from the works constructed by the United States shall from that time on be sold at the minimum price fixed by the Enabling Act of the State of Montana. [*Act approved February 28, 1905, § 1.*] (9th Sess. Chap. 53.)

2212. *Sale to United States for reclamation purposes.*—Any land now or hereafter owned by the State of Montana and needed for such irrigation and reclamation work shall, upon application made therefor to the State Board of Land Commissioners, be conveyed to the United States at the minimum price of ten dollars per acre, and there is hereby granted to the United States over all lands now or hereafter owned by the State of Montana a right of way for ditches, canals, tunnels, telephone and electric transmission lines now constructed, or to be constructed, by the United States Government in furtherance of the reclamation of arid lands, and that all conveyances of State lands shall contain a reservation of such right of way; *provided*, that before such right of way shall attach, and as a condition precedent thereto, the proper authorities of the government of the United States shall file with the Register of State Lands a map or plat of the Right of Way claimed for the ditch or canal, with reference to established section, corners and minor survey divisions; *and provided further*, that any lessor, or other person, rightfully in

possession of said lands shall be reimbursed by the National Government for actual damages by him sustained to improvements by him placed thereon, such damage to be determined by appraisement, as the State Board of Land Commissioners may direct. [*Act approved February 28, 1905, § 2.*] (9th Sess. Chap. 53.)

CHAPTER II.

TIMBER LANDS.

Section 2213. Regulations for sale of timber.

“ 2214. *Permits for cutting. Bond.*

“ 2215. *Form of permits.*

“ 2216. *Log marks. Report of cutting.*

“ 2217. *Lien of state.*

“ 2218. *Felony; penalty.*

“ 2219. *Attachment by state.*

“ 2220. *Adjudication of title.*

“ 2221. *Timber brand; penalty.*

2213. *Regulations for sale of timber.*—The State Board of Land Commissioners shall have power to sell timber on State Lands at so much per thousand feet, as in their judgment shall be for the best interest of the State. But no live timber less than eight inches in diameter, twenty feet from the ground, except lodge pole pine or bull pine shall be sold. And all timber sold or cut from state land shall be so cut and removed under the rules and regulations for the preservation of standing timber and the prevention of fires, as the Board shall prescribe; before any permit shall be granted, the timber shall be estimated and appraised by said Land Agent upon the request and subject to the approval of the said Board of Land Commissioners which estimate and appraisal shall show the amount and the value per thousand feet of all timber measuring not less than eight inches in diameter twenty feet from the ground, and of other timber below this standard, on each tract or lot, with a statement of the situation of the timber relative to risk from fire or damage of any kind, and its distance from the nearest lake, stream, or railroad. [*Act approved March 6th, 1897.*] (5th Sess. 193-194.)

2214. *Penalties for cutting. Bond.*—No permit for cutting shall be granted to any person by the said Board of Land Commissioners, except upon the sale of timber to the highest bidder, at public auction, held at its office at the State Capital, notice of which shall be published once each week for four successive weeks prior to the date of the same in two newspapers, one published in Helena, and the other in the county where the timber is situated; and the minimum price of all timber at such sale shall be the appraised value of the same as fixed by the State

Land Agent, and approved by the State Board of Land Commissioners. Every person purchasing timber at such sale, before the execution of a permit for the same, shall execute a bond to the State of Montana for the payment of double the amount of the estimated value of the timber included in the permit with sufficient surety to be approved by the Board, conditioned upon the payment to the State Treasurer of the amount that may be found due, under the terms of such permit and according to the provisions of law. [*Act approved March 6th 1897.*] (*5th Sess. 194.*)

2215. (§ 3562.) *Form of permits.*—All permits under the provisions of this act shall be made according to prescribed form by the attorney general, and shall be signed by the party applying for the same, and the said state board of land commissioners. Said permits shall contain a description of the land to be cut upon, the estimated amount of timber upon the same, the price per thousand feet, or the entire value of the timber if the right to clear the land has been sold, for which the same was bid in, the stipulated log-mark, and such other points and agreements as may be necessary to make all logs cut under its provisions the absolute property of the state, until the same are paid for; and such permits, when properly executed, shall be recorded in the office of the state board of land commissioners, and the log-mark described therein shall vest the ownership of all logs bearing the same in the state. [*Act approved March 7, 1893.*]

2216. *Log mark. Report of cutting.*—The State Land Agent shall select and designate a log mark for each person granted a permit to cut logs upon state lands, which log mark, when so selected and designated shall be filed in the office of the State Board of Land Commissioners, and shall be distinctly different from any other mark selected and designated by the State Land Agent. And where such timber is sold at so much per thousand feet, the State Land Agent shall scale all logs so cut, and make a detailed report of the same, to the State Board of Land Commissioners on or before the first day of each year and every month, showing the name of the party cutting, the description of the land cut upon, the number of logs cut and the mark thereon, the total number of feet and the value thereof per thousand as shown by the records of his office, stating whether such cutting has been according to the terms of the permit, and if not properly cut, the consequent damage to the State; and such timber or logs shall not be sold, transferred, or manufactured into lumber until the amount due the state, according to the report of said Land Agent, shall have been paid in full; and it shall be the duty of the State Land Agent to report to the State Board of Land Commissioners all trespass which has been, or which may hereafter be made upon the state timber lands, and all logs cut by

such trespass shall be disposed of as hereinafter provided. [*Act approved March 6th, 1897.*] (*5th Sess. 194-5.*)

2217. (§ 3564.) *Lien of state.*—Upon receipt of such report from the state land agent, the state board of land commissioners shall draw duplicate drafts for the amount found due; one of which shall be placed in the hands of the state treasurer, and the other forwarded to the party from which the stumpage is due, who shall immediately make payment of the required amount to the state treasurer, take duplicate receipts therefor, one of which he shall return to the state board of land commissioners, who shall thereupon execute a release of the logs, and a transfer of the mark thereon; but in no case shall such release or transfer be made until the lien of the state has been fully satisfied. If the party owning such stumpage shall not pay the amount of such draft within ten days after said draft has been placed in the hands of the state treasurer, it shall be the duty of the state board of land commissioners to take possession of the logs in question, and sell the same at public auction to satisfy the claim due the state, paying the overplus, if any, after defraying the costs and expenses of such sale, to the party entitled thereto, and to make return thereof to the state treasurer; *Provided*, That in lieu of taking possession of the logs upon which stumpage is due, the state board of land commissioners may turn the account over to the attorney general, who shall immediately proceed to collect the same upon the bond hereinbefore provided for; but in no case shall the logs be released until the account is paid; and proceedings upon the bond shall not prevent the state board of land commissioners from seizing the logs at any time before the claim of the state is satisfied. [*Act approved March 7, 1893.*]

2218. (§ 3565.) *Felony; penalty.*—If any person having a contract to cut timber under the provisions of this act shall, with intent to defraud the state, place any other log-mark upon the logs cut by him under such contract than the one mentioned therein, he shall forfeit to the state the logs upon which any other mark than that agreed upon has been placed, and shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the state prison of not less than one year, nor more than three years, or both. [*Act approved March 7, 1893.*]

2219. (§ 3566.) *Attachment by state.*—That in addition to the penalties provided for in this title against those committing trespass upon any of the lands owned or held in trust or otherwise by this state, the state board of land commissioners is hereby authorized and empowered without legal process to seize and take or cause to be seized and taken any and all lumber, wood,

grass or other property, unlawfully severed from the said lands whether the same has been removed from said lands or not, and may dispose of the property so seized and taken either at public or private sale, in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong. [*Act approved March 7, 1893.*]

2220. (§ 3567.) *Adjudication of title.*—That for the purpose of determining the title to any property seized and taken under the provisions of the preceding section, the state board of land commissioners is hereby authorized and empowered to defend in the name of the state any and all actions that may be brought for that purpose, and to do and perform those things necessary to protect the interests of the state. [*Act approved March 7, 1893.*]

2221. (§ 3568.) *Timber brand; penalty.*—The state land agent under the direction of the state board of land commissioners shall select and designate a brand, which he shall place or cause to be placed upon all timber, lumber, logs, boards or planks, that may be seized by him or the state board of land commissioners as provided for in § 2219 (3566) of this act. Any person, persons, company, association or corporation who shall remove, sell, or dispose of any such property as mentioned in § 2219 (3566) of this act, after the same has been seized or marked with a brand, or who shall erase, deface, cut or destroy any mark upon any such property, such persons shall upon conviction be imprisoned in the state prison for a term of not less than one, nor more than three years, and be subject to a fine of not less than five hundred dollars, nor more than five thousand dollars. [*Act approved March 7, 1893.*]

CHAPTER III.

SELECTION OF SCHOOL LANDS.

Section 2222. Selection of lands for educational institutions.

“ 2223. *Certificate of selection.*

“ 2224. *Article not obligatory.*

2222. (§ 3580.) *Selection of lands for educational institutions.*—The state board of education is authorized to select from the school lands and other public lands of the state suitable sites for the location of the state university, the agricultural college, and experimental station, the school of mines, and the normal school, within the limits prescribed in the acts locating the said institutions respectively, which sites may include sufficient land for the proper use and maintenance of said institutions, and said lands when so selected shall be, and they are hereby set apart

and dedicated to and for the sole use and purpose of the said institutions. [*Act approved March 10, 1893.*]

2223. (§ 3581.) *Certificate of selection.*—It shall be the duty of said state board of education, when any selection shall be made by it, under the authority of § 2222 (3580) of this act, to make a certificate of such selection, which certificate shall contain the date of such selection, a description of the lands selected, for what institutions selected, and a reference to this act by its title, and the date of its approval, as the authority for its said action, and said certificate when so made shall be signed for said board by the president and secretary thereof, and filed and recorded with the clerk and recorder of the county in which said lands are situated, and a copy thereof shall be filed with the state board of land commissioners. [*Act approved March 10, 1893.*]

2224. (§ 3582.) *Article not obligatory.*—This act shall not be construed as obligatory upon said state board of education to make such selection from the school or public lands of the state, but it may in its discretion select such state or public lands, or other lands as it may deem advisable for the best interests of said institutions. [*Act approved March 10, 1893.*]

CHAPTER IV.

REGISTER OF STATE LAND OFFICE.

Section 2225. Appointment. Term of office.

“ 2226. *Salary.*

“ 2227. *Powers and duties.*

“ 2228. *Records subject to inspection.*

“ 2229. *Clerk to state Board of Land Commissioners.*

“ 2230. *Salaries payable out of proceeds of lands.*

“ 2231. *Register's bond.*

“ 2232. *Deputy register.*

“ 2233. *Salary of deputy.*

“ 2234. *Bond.*

“ 2235. *Appraisers of State Lands.*

“ 2236. *Term of office.*

“ 2237. *Salary of appraisers.*

2225. (§ 3590.) *Appointment. Term of office.*—The office of register of the state land office is hereby created. The register shall be appointed by the governor, and his term of office shall be for a period of four years, or until his successor shall be appointed and qualified. [*Act approved March 7, 1895.*]

State v. Barret, 26 Mont. 65; 66 Pac. 504.

2226. *Salary.*—For the services required under this act, the register shall receive an annual salary of Twenty-five hundred (\$2,500) dollars, the salary of the register shall be paid out of the funds derived from the sale of State Lands and shall be appor-

tioned among the several land grants to the State according to the amount of such lands selected under each of said grants and shall be determined by the State Board of Land Commissioners. [Act approved March 4th, 1897.] (5th Sess. 195.)

2227. (§ 3592.) *Powers and duties.*—The register under such directions as may be given by the state board of land commissioners, shall have general charge of all lands belonging to the state, of all lands in which the state has an interest or which are held in trust by the state. He shall keep the books and records of the state land office in such manner as to show and preserve an accurate chain of title from the general government to the purchaser of each smallest subdivision of land; he shall preserve a permanent record in books suitably indexed, of all correspondence with any of the departments of the general government in relation to state lands; he shall preserve by proper records copies of the original lists of selection furnished by the state land agent, and of all other papers in relation to such lands which are of permanent interest; he shall have the custody of all maps, plats, books and papers relating to state lands; he shall keep a true record of all sales, leases, permits, patents, deeds and other conveyances of such lands made by the state; the amount of money paid, date of sale and payment, description of land sold or leased, number of acres thereof, name of purchaser and designation of the fund that should be credited therewith. He shall receive, record and transmit to the state treasurer all moneys received from sales, leases, permits, fines or other sources, arising from state lands. Whenever notice is received, or information is obtained of the occupancy of state lands by parties having no rights thereon, the register shall at once cause such parties to lease, purchase or vacate said lands, and for this purpose the register is empowered to administer oaths. He shall, by direction of the board, furnish lists of lands to be appraised to the proper officer or officers, shall personally conduct all sales of lands advertised for sale at the county seat of the county in which the lands advertised are situated; he shall execute all contracts of sale, lease, permits or other evidences of disposal of state lands, which shall be approved and countersigned by the president and secretary of the board. Upon all contracts, leases or permits issued by the register he shall certify the book and page where the sale is recorded. He shall have an official seal, with a proper device thereon; and the seal of the register, affixed to any contract or purchase, receipts or other instruments issued by him, duly countersigned by him as approved by the president and secretary of the state board of land commissioners, according to the provisions of this act, is prima facie evidence of the due execution of such contract or other paper. The register shall annually make a report to the governor of the transactions of

his office for the fiscal year, showing the quantity of lands sold or leased, the amount received therefor, and from what source received, the expenses of the administration of his department, and all such other matters relating to his office as may be necessary to communicate. [*Act approved March 7, 1895.*]

2228. (§ 3593.) *Records subject to inspection.*—All documents and records in the state land office shall be subject to inspection, in the presence of the register, and certified copies thereof, signed by said register, with the seal of said office attached shall be deemed presumptive evidence of the fact to which they relate, and on request they shall be furnished by the register, for such compensation as may be determined by the board, and all fees so received shall be credited to the school fund, interest account. [*Act approved March 7, 1895.*]

2229. *Clerk to State Board of Land Commissioners.*—The State Board of Land Commissioners shall have power to appoint one clerk whose salary shall be Twelve Hundred (\$1,200.00) Dollars per annum and shall act as clerk of the State Land Register and the State Land Agent without extra compensation. [*Act approved March 6th, 1897, § 3. (5th Sess. 92-3.)*]

2230. *Salaries payable out of proceeds of lands.*—The salary of the State Land Agent, the State Land Register and all expenses of the State Land Office, including the pay of assistants and clerk, shall be paid out of the funds derived from the sale and lease of State Lands and shall be apportioned among the several funds by the State Board of Land Commissioners. [*Act approved March 6th, 1897, § 5. (5th Sess. 93.)*]

2231 (§ 3595.) *Register's bond.*—The register shall furnish a bond, signed by two bondsmen, residents of the state, in the sum of ten thousand dollars, said bond to be approved by the state board of land commissioners. [*Act approved March 7, 1895.*]

State v. Barret, 26 Mont. 65; 66 Pac. 506.

2232. *Deputy registers.*—The Register of the State Land Office is hereby authorized to appoint, subject to the approval of the State Board of Land Commissioners, a Deputy Register, who shall, under the direction of the Register of the State Land Office, perform such duties as may properly be done by the Register. [*Act approved February 24, 1899.*] (6th Sess. 85.)

2233. *Salary of Deputy.*—The salary of such Deputy shall be Eighteen hundred dollars (\$1800.00) per annum, which shall be paid out of the funds derived from the sale and leasing of State Lands and which shall be apportioned among the several funds by the State Board of Land Commissioners. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 90.)

2234. *Bond*.—The Deputy Register shall furnish a bond, signed by two bondsmen, residents of the State, in the sum of ten thousand dollars, said bond to be approved by the State Board of Land Commissioners. [*Act approved February 24th, 1899, § 3.*] (6th Sess. 86.)

2235. *Appraisers of state boards*.—That the State Board of Land Commissioners is hereby authorized to appoint as many persons, not exceeding three, as in their judgment may be needed in the work of selecting, appraising and re-appraising of State Lands and timber thereon. [*Act approved March 6th, 1897, § 1.*] (5th Sess. 92.)

2236. *Term of office*.—Such persons so appointed shall act as assistants to the State Land Agent, and shall engage actively in the field work of selecting and appraising State Lands and timber thereon. The State Board of Land Commissioners shall appoint such assistants and continue them in office during only such seasons of the year, as they can be actively engaged in field work. They shall draw pay only when engaged in such work and shall hold office at the pleasure of said Board. [*Act approved March 6th, 1897, § 2.*] (5th Sess. 92.)

2237. *Salary of appraisers*.—The salary of the assistants appointed under this Act to select and appraise State Lands and timber thereon shall be One Hundred (\$100.00) Dollars per month together with necessary expenses. [*Act approved March 6th, 1897, § 4.*] (5th Sess. 93.)

CHAPTER V.

CAREY LAND ACT BOARD.

Section 2238. *Creation of board.*

“ 2239. *Successor to state arid land commission.*

“ 2240. *Membership of board.*

“ 2241. *Expenses of board.*

“ 2242. *Engineer as chairman. Meetings.*

“ 2243. *State engineer.*

“ 2244. *Same. Duties.*

“ 2245. *Same. Bond and oath.*

“ 2246. *Salary.*

“ 2247. *Office at state capitol.*

“ 2248. *Secretary.*

“ 2249. *Salary of Secretary.*

“ 2250. *State not liable. Eight hours labor.*

“ 2251. *Carey land act fund.*

“ 2252. *Authority of Carey land act board to cancel outstanding bonds.*

“ 2253. *Appropriation for investigation of character of lands.*

“ 2254. *Appropriation of water by state.*

2238. *Creation of board.*—For the purpose of enabling the State to accept the offer of the United States, made by Act of Congress, approved August 18, 1894, entitled, "An Act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," and as amended by an Act of Congress, approved March 3, 1901; for the purpose of reclaiming the lands therein mentioned, in accordance with the terms of said Acts, so that the State can obtain title thereto, a Board shall be, and is hereby created under the name of the Carey Land Act Board, which shall consist of three members, and they and their successors shall remain and continue to to be such for all the purposes hereinafter provided. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 114.)

2239. *Successors to state arid land commission.*—The Carey Land Act Board shall be successor of the State Arid Land Grant Commission, which is hereby abolished, and as such successor shall perform the same duties pertaining to unfinished contracts of said Commission as were imposed upon said Commission under the law creating said commission and defining its powers and duties, so far as the same may be necessary to complete such contracts or protect the State's interest. [*Act approved March 7, 1903, § 2.*] (8th Sess. Chap. 114.)

2240. *Membership of board.*—Said Carey Land Act Board shall consist of the State Engineer, Secretary of State, and the State Examiner, none of whom shall receive additional compensation for service on said Board. [*Act approved March 7, 1903, § 3.*] (8th Sess. Chap. 114.)

2241. *Expenses of board.*—The traveling expenses necessarily incurred in the performance of his duties as a member of the Board, by any member of the Board or by the Secretary of the Board, and necessary office expenses of the Board shall be paid by the State, on sworn statements of accounts, approved by the State Board of Examiners. [*Act approved March 7, 1903, § 4.*] (8th Sess. Chap. 114.)

2242. *Engineer as chairman. Meetings.*—The State Engineer shall be Chairman of the Carey Land Act Board, and shall sign all contracts made by it. Said Board shall meet at such times and places as the State Engineer designates, except that in the absence of the State Engineer an emergency occurring, a meeting may be held, but the action of the Board at such meeting shall not be binding until ratified by the State Engineer. [*Act approved March 7, 1903, § 5.*] (8th Sess. Chap. 114.)

2243. *State Engineer.*—There shall be a State Engineer, who shall be appointed by the Governor of the State, and confirmed by the Senate; he shall hold his office for the term of four years, or until his successor shall have been appointed and shall have qualified; no person shall be appointed to this position who has

not such theoretical knowledge and such practical experience and skill as shall fit him for the position. [*Act approved March 7, 1903, § 6.*] (8th Sess. Chap. 114.)

2244. *Same. Duties.*—The State Engineer shall:

1. As Chairman of the Carey Land Act Board perform such duties as are imposed upon him by the law governing that Board, giving special attention to the projects already commenced by the State Arid Land Grant Commission.

2. With the approval of the State Board of Land Commissioners, he shall examine or cause to be examined, tracts of land belonging to the State or to State institutions, and ascertain how much of same it is practicable to irrigate and report to said Land Commissioner detailed description of any such lands as can be irrigated, the probable cost of an irrigation system for same; and when directed so to do by said Commissioners shall prepare plans and specifications for any such irrigation system.

3. The State Engineer shall become conversant with the waterways of the State and the needs of the State as to irrigation matters, shall make or cause to be made, measurements and calculations of the ordinary and flood discharge of streams, co-operating in this work as much as possible with the U. S. Geological Survey and the Montana Experiment Station; such measurements to be made on streams in order of their importance, *provided* that measurements already made, if deemed reliable, may be adopted.

4. The State Engineer shall keep in his office full and proper records of his work, observations and calculations, all of which shall be property of State.

5. The State Engineer shall prepare and render to the Governor, bi-annually, and oftener if required, full and true reports of his work and such suggestions as to laws and amendments as he deems best.

6. He shall serve on the State Board of Health. [*Act approved March 7, 1903, § 7.*] (8th Sess. Chap. 114.)

2245. *Same.—Bond and oath.*—Before entering upon the duties of his office, the State Engineer shall take the oath of office and shall give a bond to the State of Montana in the penal sum of Five Thousand Dollars, conditional upon the faithful discharge of the duties of his office, and for the delivery of his successor, or other officer appointed by the Governor to receive the same, all moneys, books, and other property belonging to the State, then in his hands or under his control, or with which he may be legally chargeable as such officer. [*Act approved March 7, 1903, § 8.*] (8th Sess. Chap. 114.)

2246. *Salary.*—The State Engineer shall receive a salary of Two Thousand Five Hundred Dollars per annum. [*Act approved March 7, 1903, § 9.*] (8th Sess. Chap. 114.)

2247. *Office at state capitol.*—The State Engineer shall keep

his office at the State Capitol, in the Capitol Building. [*Act approved March 7, 1903, § 10.*] (8th Sess. Chap. 114.)

2248. *Secretary.*—Said Carey Land Act Board may, if in its judgment necessary, have a Secretary, and may employ as such secretary, a clerk, who shall keep a proper record of its transactions, keep its accounts, have charge of funds paid to it, of its correspondence and documents, countersign papers and instruments, and perform such duties as the Board may require. He shall have authority to administer oaths whenever necessary in the performance of his duties as Secretary. He shall give a bond for the faithful performance of those duties in an amount to be fixed by the Board. [*Act approved March 7, 1903, § 11.*] (8th Sess. Chap. 114.)

2249. *Salary of secretary.*—The Secretary's salary shall be fixed by the Board in proportion to services performed, provided the sum shall not exceed One Hundred and Twenty-Five Dollars (\$125.00) per month. [*Act approved March 7, 1903, § 12.*] (8th Sess. Chap. 114.)

2250. *State not liable. Eight hours labor.*—Nothing in this Act shall be construed as authorizing the Board to obligate the State to pay for any work constructed under any contract, or to hold the State in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the State. In all contracts let under this Act, eight hours shall constitute a day's work, and no Mongolian shall be employed thereon. [*Act approved March 7, 1903, § 13.*] (8th Sess. Chap. 114.)

2251. *Carey land act fund.*—As provided in the Act of Congress, all moneys received by the Board from the sale or lease of land selected under the provisions of this Act shall be deposited with the State Treasurer to the credit of the Carey Land Act Fund. [*Act approved March 7, 1903, § 14.*] (8th Sess. Chap. 114.)

2252. *Authority of Carey land act board to cancel outstanding bonds.*—The Carey Land Act Board is hereby authorized and empowered to take all steps necessary to secure cancellation of bonds issued for the reclamation of arid lands under the Act of Congress known as the Carey Act, and under any Acts of the Legislative Assembly of the State of Montana; to accept bonds in payment for canals, water rights, lands and appurtenances and execute deeds therefor; to compromise claims and to make contracts for the reclamation and settlement of said arid lands. [*Act approved March 6, 1907.*] (10th Sess. Chap. 117.)

2253. *Appropriation for investigation of character of lands.*—That to carry out the provisions of Paragraphs two (2) three (3) four (4) of Section 7, of Chapter CXIV, Acts 1903, (*Ante* § 2244), providing for the examination of State Lands to ascer-

tain how much of same it is practicable to Irrigate and for the measurement of streams which might furnish water for said lands, and for keeping proper record of such examinations and measurements; and to Provide the necessary Assistants for State Engineer, there is hereby Appropriated the sum of Two Thousand (\$2,000.00) Dollars for the fiscal year of 1905, and Two Thousand (\$2,000.00) Dollars for the fiscal year 1906, or so much thereof as is necessary, to be expended under the direction of the State Board of Land Commissioners and State Engineer; claims against said Appropriation to be passed upon and paid in same manner as other claims against the State. [*Act approved March 3, 1905, § 1.*] (9th Sess. Chap. 85.)

2254. *Appropriation of water by state.*—That the State Board of Land Commissioners is hereby Authorized through the State Engineer as its agent, or otherwise, at its discretion, to appropriate any available waters for use upon State Lands, and to authorize the construction of irrigation works for said lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals and said water right laws are hereby made available and may be applied by said Board or its agent. [*Act approved March 3, 1905, § 2.*] (9th Sess. Chap. 85.)

CHAPTER VI.

RECLAMATION OF STATE ARID LANDS.

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2255. *Powers of Carey land act board.*—The Carey Land Act Board shall have and it is hereby granted, full power and authority to take all steps necessary to comply with all and singular the conditions of an Act of Congress approved August 18, 1894, entitled “An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30th, 1895, and for other expenses” and all Acts amendatory thereto now in force or which may hereafter be enacted providing for the reclamation of desert lands by state within whose borders the same may lie, and Acts pertaining thereto, to the end that the State may receive the full benefit and advantage accruing to it from the same. Said Board shall have, and it is hereby given, full power to prepare and file any map or maps of any land or lands proposed to be irrigated and reclaimed, which shall exhibit the plan showing the mode of contemplated irrigation and reclamation and to enter into contracts on behalf of the State with the United States for the reclamation and irrigation of such lands; *provided*, that, said Board shall have no power, by any such contract, to create any indebtedness against the State or to obligate the State to pay to the United States or to anyone anything on account of such lands. [*Act approved March 8, 1905, § 1.*] (*9th Sess. Chap. 105.*)

2256. *Board to have power to enter into contracts for reclamation and settlement of land.*—The said Board shall have, in the manner hereinafter provided, authority to enter into contracts for the reclamation and irrigation of any such lands, in respect to which contract may be or may have been entered into, between the State and the United States, and for placing settlers thereon and any and all contracts heretofore entered into by said Board for the reclamation, irrigation and settlement of any lands, for the reclamation and irrigation of which the State has heretofore entered into contracts with the United States are hereby ratified and confirmed; *provided, however*, that nothing in this Act shall be construed as authorizing the Board to obligate the State to pay for any work constructed under any contract, or to hold the State in any way responsible to settlers for failure of contractors to complete the work according to the terms of their contract with the State. [*Act approved March 8, 1905, § 2.*] (*9th Sess. Chap. 105.*)

2257. *Power to make rules and regulations.*—Said Board shall have power to make such rules and regulations for the conduct of its business as may be necessary, which do not conflict with the Acts of Congress relating to Carey Lands, or laws of Montana. [Act approved March 8, 1905, § 3.] (9th Sess. Chap. 105.)

2258. *Members of board not to be interested in contract.*—No member of the Board or any employee thereof shall in any way be financially interested in any contract or work contemplated by this Act. [Act approved March 8, 1905, § 4.] (9th Sess. Chap. 105.)

2259. *Applications to Board to reclaim lands.*—Any person or persons, company, association or corporation, constructing, having constructed or desiring to construct ditches, canals or other irrigation works to reclaim land under the provisions of this Act, may file with the Board a request for the selection, on behalf of the State by the Board, of the land to be reclaimed, describing said land by the Government survey. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the reclamation of the land asked to be selected and to put settlers on the same. The proposal shall be prepared in accordance with the rules of the Board and with the regulations of the Department of the Interior. It shall state the source of an available and adequate water supply, the location and dimensions of the proposed works, the estimated cost thereof, and that perpetual water rights inseparable from the land reclaimed and to embrace a proportionate interest in the canal or other irrigation works, will be sold or leased to settlers on the land to be reclaimed, and be accompanied by a map of the lands to be reclaimed and the route of the ditches or canals to be constructed. [Act approved March 8, 1905, § 5.] (9th Sess. Chap. 105.)

2260. *Assistants to state engineer.*—Whenever the State Engineer shall in his judgment, from an examination of the maps and field notes submitted for his examination be unable, to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, and whether or not the lands proposed to be irrigated are of such character as to come under the provisions of the aforesaid Acts of Congress, the Board may direct the Engineer to make, or cause to be made by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the Board. [Act approved March 8, 1905, § 6.] (9th Sess. Chap. 105.)

2261. *Approval of requests for contracts.*—If such request shall be approved by the Board it shall forthwith cause reservation of such lands to be made and enter into appropriate contract with the United States, subject to the limitations by this Act

prescribed for the reclamation of the same. When requests or proposals are not approved by the Board, the Board shall notify the parties making such proposal of such action and the reason therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal, but the Board may at its discretion extend the time to six months. [*Act approved March 8, 1905, § 7.*] (9th Sess. Chap. 105.)

2262. *Deposits to cover preliminary survey.*—Any person wishing to reclaim land under this Act, may apply to the Board for a reconnaissance, or a preliminary survey, and the Board shall require from such applicant a deposit of such an amount as in its judgment will defray the expense thereof; and cause such survey to be made by the State Engineer, and thereafter the unused part of such deposit, if any, shall be returned to such person. Persons at whose instances such reservations are made shall pay all land office fees and furnish necessary maps; *provided*, that the provisions of this Section shall not apply to co-operative projects described in Section 2266 (12) of this Act. [*Act approved March 8, 1906, § 8.*] (9th Sess. Chap. 105.)

2263. *Contracts and bonds.*—Upon contracting with the United States for the reclamation of such lands, it shall be the duty of the Board immediately to enter into a contract with the parties submitting the proposal in accordance therewith, which contract shall contain complete specifications of the location, dimensions, character and estimated cost of the proposed ditch, canal or other irrigation works, the date or dates when the contractor will put settlers on the reclaimed land, and the price and terms upon which the State is to sell or lease the land to the settlers. The proposed contractor shall execute a bond in such an amount and with such sureties as the Board shall require, to be conditioned upon the faithful performance of the contract with the State, and in case he shall fail within sixty days after being notified by the Board that it has contracted with the United States for the reclamation of the said lands and is ready to enter into a contract with him in accordance with his proposal or if he shall fail within such time to execute such bond, the said Board may enter into similar contract with any other person, exacting a like bond. No contract shall be made by the Board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within one year from the date of contract, and thereafter to be prosecuted diligently to completion. [*Act approved March 8, 1905, § 9.*] (9th Sess. Chap. 105.)

2264. *Rights of contractor.*—The builder of any such canal or other irrigation works, shall have the right to so construct or to subsequently enlarge or make such changes in the same as will permit the water to be used for power purposes; and to use any

surplus water carried therein for such purpose; such construction, enlargement, change or use to be done without cost to, or interference with, any purchaser or owner of perpetual water right from such canal. All income from the use of such water for power shall belong to said builder, his heirs or assigns; but the use for power development shall be subordinate to the irrigation and domestic use of the water and shall not interfere in any way with perpetual rights. [*Act approved March 8, 1905, § 10.*] (*9th Sess. Chap. 105.*)

2265. *Same.*—Any person or company entering into a contract to construct canals or other irrigation works and to sell water rights to settlers under this Act, may maintain and operate the same until perpetual water rights appurtenant to ninety per cent of the lands, to reclaim which such works were constructed, have been sold and paid for, when such works shall be turned over to the settlers and others owning rights to take water from such canals, who shall have the right thereafter to maintain and operate it. The contractor, so long as he maintains and operates the irrigation works, shall have the right to collect from settlers on such lands not to exceed one dollar per acre, per year, for each acre of land to which his or her water right is appurtenant, said charge to include the cost of maintenance, operation and delivery of water to said land. [*Act approved March 8, 1905, § 11.*] (*9th Sess. Chap. 105.*)

2266. *Co-operative reclamation projects.*—It shall be the duty of the Carey Land Act Board to aid co-operative reclamation projects as follows: Parties desiring such aid shall incorporate as a Co-operative Irrigation Association for the purpose of reclamation by their own labor of arid lands open to reservation under the said Acts of Congress and of the settlement upon said lands. Each member shall subscribe to one share of the stock for each forty acre tract of land to be filed upon and reclaimed by him, and the total number of shares issued by such Association shall be limited to one for each forty acres of land filed upon. After the articles of incorporation are filed with the Secretary of State, the fee for which shall be five dollars, the Association may apply to the Carey Land Act Board for aid and it shall be the duty of the State Engineer, or his assistant, under such rules and regulations as the Board may adopt, to investigate the proposed project and if found feasible, to prepare the maps and data required for reserving the land under the Carey Act and subsequently to furnish the Association with the engineering plans necessary for reclamation and to exercise a general supervisory control over their execution. Thereupon the said Board shall, if in the judgment of the State Engineer the reclamation of such land is feasible and practicable, cause the same to be reserved and contract with the United States subject to the same limitations as here-

inbefore provided, for the reclamation of the same. The Association shall pay the United States Land Office fees for the reservation of the lands and immediately after contract shall have been entered into with the United States shall pay to the Carey Land Act Board twenty-five cents (25) per acre filing fee for each acre reserved. When all or any part of said land has been reclaimed the Board shall apply for patent for same, *provided*, that all cash outlay required for obtaining patent shall be paid to the Board by the Association immediately. After water has been available for irrigation of said lands for four seasons, the Association shall not later than Nov. 1st of said fourth season, pay to the Carey Land Act Board such additional amount not exceeding One Dollar (\$1.00) per acre as may have been agreed upon between said Board and such Association before the reservation was made, for all said land patented to the State and thereupon deeds shall be issued by the State to each of the stockholders of said Association having settled upon any of said lands, for so many acres as their stock may entitle them to respectively. After the State has obtained patent it may issue deeds at any time when the land is paid for, in tracts of not less than 40 acres nor more than 160 acres to any stockholder designated by the Association, being a settler upon any of said lands. Water rights for said lands shall be appurtenant to and inseparable from the legal subdivision for which it was appropriated. [*Act approved March 8, 1905, § 12.*] (*9th Sess. Chap. 105.*)

2267. *Default of construction.*—Upon the failure of any parties having contracts with the State for the construction of irrigation works, to begin the same within the time specified by the contract or to complete the same within the time or in accordance with the specifications of the contract with the State or on a cessation of work under the contract for a period of six months after the second year, it shall be the duty of the Board to give such parties written notice of such failure, and if, after a period of sixty days from the receipt of such notice they shall have failed to proceed with the work or to conform to the specifications of their contract with the State the penal bond securing performance of such contract shall at once be and be declared forfeited to the State and the contract, in so far as it relates to any of said land not settled or reclaimed, shall immediately thereafter be void. On the application of the said Board the Attorney General shall be required to institute or defend any suits or actions in which may, in any manner be brought in question the rights of the State in any lands in which the State has acquired any interest under any of the said Acts of Congress, and the said Board is hereby authorized and empowered in the name of the State, to execute any conveyances of any property, the title to which is in the name of the State by reason of any Acts of the said Board or its predecessor the Arid Land Grant Commission.

a conveyance of which is necessary to, or made a condition of, the relief asked for by the State in any such action. [*Act approved March 8, 1907, § 13.*] (9th Sess. Chap. 105.)

2268. *Classification of lands.*—The Board shall cause to be classified all lands reserved under this Act, the expenses for which shall be paid by the State out of the funds in the Carey Land Act Fund if any; if none, then out of funds not otherwise appropriated, upon vouchers duly approved by the Board. The Board shall sell or lease any or all of the lands acquired by the State under provisions of this Act in quantity not to exceed one hundred and sixty acres to one individual, the price and terms of such sale or lease to be fixed by the Board according to said classification, provided, the selling price be not less than fifty cents per acre nor more than two dollars and fifty cents per acre. [*Act approved March 8, 1905, § 14.*] (9th Sess. Chap. 105.)

2269. *Applications to settle lands reclaimed.*—Any citizen of the United States, or any person having declared his intention to become a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the Board, to enter any of said land at any time after the same has been classified, in any amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of settlement in accordance with the Act of Congress and the laws of this State relating thereto, and that the applicant has never received the benefit of the provisions of this Act, to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association who have been authorized by the Board to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered land under the provisions of this Act, he shall so state in his applications, together with description, date of entry and location of said land. The Board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications of entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed the twenty-five cents per acre accompanying it shall be returned to applicant; *provided*, that where the construction company fails to furnish water to any settler under the provisions of its contract with the State, the State shall

refund to such settler all payments that he shall have made to the State. [*Act approved March 8, 1905, § 15.*] (*9th Sess. Chap. 105.*)

2270. *Rights of claimants.*—The Claimant first settling upon any such lands shall have the prior right to enter the same; *provided, however*, that if any claimant shall fail within sixty days after his settlement upon any such lands, if the same have been classified, or within sixty days after the classification thereof, if the same was not made at the time of settlement, shall file his application to enter the same with the said Board and make the payment required therewith; otherwise, claim is forfeited and the tract shall be awarded to the next settler in the order of time, on the same tract of land, who has filed his application, made payment and otherwise complied with the conditions of the law. [*Act approved March 8, 1905, § 16.*] (*9th Sess. Chap. 105.*)

2271. *Execution of deeds.*—After the State has received a patent for any such land reclaimed, and a purchaser has paid in full for any part of it, said Board shall, in the name of the State, execute and deliver to him a deed for the same. [*Act approved March 8, 1905, § 17.*] (*9th Sess. Chap. 105.*)

2272. *Failure of claimants to comply with contract.*—If any claimant having filed on any such land shall fail for a period of one year after water is available for his land, and after notice thereof is given to him by said Board, by letter mailed to the post office nearest such land, to make payment of any sums remaining due on account of the purchase price for such land, then, after notice shall have been published once a week for four successive weeks in a newspaper of general circulation in the County where the land is located, his or her rights to any, and all such land and any water right appurtenant to the same and all payments made, shall be forfeited. [*Act approved March 8, 1905, § 18.*] (*9th Sess. Chap. 105.*)

2273. *Water-rights. Foreclosure of lien for deferred payments.*—The water rights to all lands acquired under the provisions of this Act shall attach to and become appurtenant to the land as soon as title passes from the United States to the State. Any person, company or association, furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water rights; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner or possessor of said lands. Upon default in any of the deferred payments secured by any lien under the provisions of this Act, the person, company or persons, association or incorporated company holding or owning said lien, may foreclose the same, in the same manner as mortgages or real property are foreclosed. All sales shall be advertised in a newspaper of gen-

eral circulation, published in the County where said land or some part thereof is situate, for six consecutive weeks, and the same shall be sold to the highest bidder at the front door of the court house of the County, of such place as may be agreed upon by the terms of the aforesaid contract. The sheriff of said County shall in all such cases give all notices of sale and shall sell all such land and water rights and shall make and execute a certificate of sale to the purchaser thereof, and at such sale no person, company of persons, association or incorporated company, owning and holding any lien shall bid in or purchase any land, or water right at a greater price than the amount due on deferred payment for said water right and land, and the cost incurred in making the sale of said land and water right. At any time within twelve months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, company of persons, association or incorporated company purchasing at such sale, to redeem said land and water rights, and the purchaser shall assign the certificate of sale to such land and water rights to such original owner upon the payment by him within such twelve months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest at ten per cent per annum, costs and charges thereon. When the lien holder becomes the purchaser at such foreclosure sale, and such lands and water rights are not redeemed by the original owner within twelve months, then at any time within three months thereafter any person desiring to settle and use such lands and water rights may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and charges thereon. Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the County Clerk of the County where such land is situated a certified copy of such certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person redeeming the same. If the land and water rights shall not be redeemed by any person within the time and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of certificate of sale by the original purchaser, to issue a deed such purchaser. Where such land and water rights are not purchased by the lien holder at such foreclosure sale,

it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale the amount of the lien together with all interest, costs and charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases. Under no circumstances shall a lien be foreclosed against land belonging to the state and not filed on by an individual. In case the claimant whose rights to any such land and water shall have been divested by any deed issued, as in this Section provided, shall not have paid to the State sums due or to become due to it on account of such land; any person desiring to settle upon the same shall acquire the right so to do upon payment to the grantee under such sheriff's deed of the amount which would have affected a redemption at the time with ten per cent additional; *provided* that the holder under the deed shall have the right to remove any crops which may be growing upon such land at the time such intending settler offers to pay such sum. [Act approved March 8, 1905, § 19.] (9th Sess. Chap. 105.)

2274. *Rights of way.*—The map in the office of the Board, of the lands selected under the provisions of this Act, shall show the location of the canals or other irrigation works approved in contract with the Board, and all lands filed upon shall be subject to the right of way of such canals or irrigation works. Said right of way to embrace the entire width of the canal and such additional width as may be required for its proper construction, operation and maintenance, the width of the right of way to be specified in the contracts provided for in this Act. [Act approved March 8, 1905, § 20.] (9th Sess. Chap. 105.)

2275. *Board may exercise right of eminent domain.*—The right of eminent domain may be exercised in the manner prescribed by the Code of Civil Procedure by any person, association or corporation, foreign or domestic entering into any contract with the said Board to reclaim any lands in order to condemn any property subject to condemnation as therein provided, for right of way for the construction of which may be provided for by any such contract, or for the erection or construction of any works to be used in connection therewith. [Act approved March 8, 1905, § 21.] (9th Sess. Chap. 105.)

2276. *Right of board to appropriate water.*—The said Board or any person, association or corporation contracting with it for the reclamation of any such lands shall have the right to appropriate any unappropriated waters of the State necessary to the carrying out of any contracts into by them or either of them in relation to the same, in the same manner as appropriations are required to be made in behalf of individuals. [Act approved March 8, 1905, § 22.] (9th Sess. Chap. 105.)

2277. *Scal. Fees.*—The Board shall prescribe the duties of all its employes, shall use a seal and shall collect the following fees: For filing each application, one dollar; for filing each final proof, one dollar; for issuing each patent, one dollar; for making certified copies of records or papers, the same fees as provided to be charged by the Secretary of State for like services. The money collected for fees shall be paid to the State Treasurer on the last day of each month, and by him credited to the Carey Land Act Fund. The filing fees, when paid for land reserved but not patented to the State, shall be kept in a separate fund, called Carey Land Filing Fund and can be paid out only for refunds in the event that the land is not reclaimed within the contract period; said refund to be made upon orders from the Board to the State Auditor, specifying the lands filed on and by whom; but after any of these lands are patented the filing fees paid for the same shall be transferred from the said fund to the Carey Land Act Fund upon an order from the Board to the State Auditor specifying the legal subdivisions of land and total acreage. [Act approved March 8, 1905, § 23.] (9th Sess. Chap. 105.)

2278. *Board may permit limited settlements.*—For the purpose of expediting the settlement of any lands for the reclamation of which the said Board may make contracts, it may on such terms as may by the said Board be prescribed by rule or contract permit any such lands to be improved and occupied and cultivated for limited periods; *provided, however*, that such occupancy shall not preclude any person desiring to settle upon such lands from doing so at any time. [Act approved March 8, 1905, § 24.] (9th Sess. Chap. 105.)

2279. *Disposition of proceeds of sale or lease of lands.*—All moneys received by the Board from the sale or lease of lands reclaimed under the provisions of this Act shall be deposited, upon the last day of each month, with the State Treasurer, to the credit of the Carey Land Act Fund and such sums as may be necessary shall be used—

(1) For the payment of the current expenses of the Board and of the State Engineer's office hereafter incurred in carrying out the provisions of this Act, said Engineer's expenses to include a charge for actual cost of time devoted to Board matters.

(2) To reimburse the State General Fund for expenses of the Board, Two Thousand Dollars, and of the State Engineer Two Thousand Dollars heretofore incurred and paid out of the General Fund.

(3) To reimburse the State for expenses of the State Arid Land Grant Commission, Five Thousand Seven Hundred and Seven Dollars and sixty-five cents (\$5,707.65) heretofore paid out of the General Fund: *Provided*, that the reimbursements thus

made shall be paid into the State Engineer's Expense Fund, which is hereby created and shall be used under the direction of the State Board of Land Commissioners and the State Engineer in carrying out the provisions of paragraphs two, three, and four, of Section seven (*2244 Ante*), Chapter CXIV, Acts 1903. Claims against said expense fund to be passed upon and paid in same manner as other claims against State funds.

(4) After paying the current expenses and reimbursements above designated, if there be a balance in said fund, there shall be estimated, by the Board, the sum that in its judgment will suffice for its next two years expenses, and whenever the remainder in said fund, less said estimate, shall equal two thousand dollars, the same shall be applied pro rata to the payment of warrants issued by the State Arid Land Grant Commission for expenses incurred by it against Districts Nos. 1, 2, and 4, and open accounts which are credited on the ledger of said Commission to sundry persons for supplies furnished, the aggregate of said warrants and accounts being, without interest, \$18,697.45; and any balance remaining shall constitute a Trust Fund in the hands of the State Treasurer, the same to be used only for the reclamation of other arid lands. [*Act approved March 8, 1905, § 25.*] (*9th Sess. Chap. 105.*)

2280. *Expenses.*—That the expenses actually incurred in connection with each district, or project to be reclaimed under this Act may be determined, it shall be the duty of the State Engineer to report to the Board his expenses and the time he spends in connection with each. The office and clerical expenses of the Board shall be by it apportioned at the end of each fiscal year among various districts and projects, and correct charges of these and the Engineer's salary and expenses made against the different districts and projects. [*Act approved March 8, 1905, § 26.*] (*9th Sess. Chap. 105.*)

2281. *Boards shall issue biennial reports.*—The Board shall issue a biennial report showing the status of various districts and projects, the receipts and expenses, lands reclaimed and patented to the State, if any, and other results of its works. If requested by the Governor a report shall be made at any time. [*Act approved March 8, 1905, § 27.*] (*9th Sess. Chap. 105.*)

2282. *Appropriations.*—There is hereby appropriated out of the funds of the State, not otherwise appropriated, the following sums, or as much thereof as may be necessary, from which shall be paid the Secretary, the office and traveling expenses of the Carey Land Act Board viz: One thousand dollars for the fiscal year ending Nov. 30, 1905, and one thousand dollars for the fiscal year ending Nov. 30, 1906; *Provided*, if funds are received from sale of lands reclaimed under the Carey Act, that besides the two thousand dollars above appropriated, there is hereby appropriated

from the Carey Land Act Fund for use at the discretion of the Board in carrying out the provisions of this Act, an additional sum of two thousand dollars. [Act. approved March 8, 1905, § 28.] (9th Sess. Chap. 105.)

TITLE IX.

CHAPTER I. LOCATION OF MINING CLAIM.

II. RIGHTS OF WAY.

CHAPTER I.

LOCATION OF MINING CLAIMS.

- Section 2283. *Discovery; notice; marking boundaries; sinking shaft.*
- “ 2284. *Record of certificate of location.*
- “ 2285. *Mill sites.*
- “ 2286. *Relocation of abandoned claims.*
- “ 2287. *Rights of relocater.*
- “ 2288. *Amended location.*
- “ 2289. *Relocation by owner.*
- “ 2290. *Amendments or relocation not a waiver of acquired rights.*
- “ 2291. *Rights of third persons not affected.*
- “ 2292. *Validating location heretofore made.*
- “ 2293. *Defective locations good against persons with notice.*
- “ 2294. *Effect of patent.*
- “ 2295. *Amended locations.*
- “ 2296. *Effect of amended or declaratory statement.*

2283. *Discovery; notice; marking boundaries; sinking shaft.*—Any person who discovers upon the public domain of the United States, within the State of Montana, a vein, lode or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, or a placer deposit of gold, or other deposit of minerals having a commercial value which is subject to entry and patent under the mining laws of the United States, may, if qualified by the laws of the United States, locate a mining claim upon such vein, lode, ledge or deposit, in the following manner, viz:

I. He shall post, conspicuously, at the point of discovery a written or printed notice of location, containing the name of the claim, the name of the locator, (or locators, if there be more than one,) the date of the location, which shall be the date of posting such notice, and the approximate dimensions of area of the claim intended to be appropriated.

II. Within thirty days after posting the notice of location, he shall distinctly mark the location on the ground so that its

boundaries can be readily traced. It shall be *prima facie* evidence that the location is properly marked if the boundaries are defined by a monument at each corner or angle of the claim, consisting of any one of the following kinds: (1) A tree at least eight inches in diameter, and blazed on four sides. (2) A post at least four inches square by four feet six inches in length, set one foot in the ground, unless solid rock should occur at a less depth, in which case the post should be set upon such rock, and surrounded in all cases by a mound of earth or stone at least four feet in diameter by two feet in height. A squared stump, of the requisite size, surrounded by such mound, shall be deemed the equivalent of a post and mound. (3) A Stone at least six inches square by eighteen inches in length, set two-thirds of its length in the ground, with a mound of earth or stone alongside at least four feet in diameter by two feet in height, or (4) a boulder at least three feet above the natural surface of the ground on the upper side. Where other monuments, or monuments of lesser dimensions than those above described, are used, it shall be a question for the jury, or for the court where the action is tried without a jury, as to whether the location has been marked upon the ground so that its boundaries can be readily traced. Whatever monument is used, it must be marked with the name of the claim and the designation of the corner, either by number or cardinal point.

III. Within sixty days after posting such notice, he shall sink a shaft upon the vein, lode or deposit, at or near the point of discovery, to be known as the discovery shaft. Such shaft shall be sunk to the depth of at least ten feet, vertically, below the lowest part of the rim of such shaft at the surface, or deeper if necessary to disclose the vein or deposit located, and the cubical contents of such shaft shall be not less than one hundred and fifty cubic feet; *provided*, that any cut or tunnel which discloses the vein, lode or deposit located at a vertical depth of at least ten feet below the natural surface of the ground and which constitutes at least one hundred and fifty cubic feet of excavation, shall be deemed the equivalent of such shaft, and, provided also, that, where the vein, lode or deposit located is disclosed at a less vertical depth than ten feet, any deficiency in the depth of the discovery shaft, cut or tunnel may be compensated for by any horizontal extension of such working, or by any excavation done elsewhere upon the claim, equalling, in cubical contents, the cubical extent of such deficiency; but in every case at least 75 cubic feet of excavation shall be made at the point of discovery. [Act approved February 18, 1907, § 1.] (10th Sess. Chap. 16.)

Sanders v. Noble, 22 Mont. 117; 55 Pac. 1039.

Bramlett v. Flick, 23 Mont. 111; 57 Pac. 875.

Purdum v. Laddin, 23 Mont. 389; 59 Pac. 153.

McKay v. McDougall, 25 Mont. 266; 64 Pac. 672.

Hahn v. James, 29 Mont. 3; 73 Pac. 965.

Wilson v. Freeman, 29 Mont. 470; 75 Pac. 84.

Mares v. Dillon, 30 Mont. 129; 75 Pac. 963.

Dolan v. Passmore, 34 Mont. 278, 85 Pac. 1034.

Helena Co. v. Baggageley. 34 Mont. 468; 87 Pac. 457.

Butte C. M. Co. v. Barker, 35 Mont. 337; 89 Pac. 302.

2284. *Record of certificate of location.*—Within sixty days after posting the notice of location and for the purpose of constituting constructive notice of the location, the locator shall record his location in the office of the county clerk of the county in which such mining claim is situated. Such record shall consist of a certificate of location containing:

I. The name of the lode or claim.

II. The name of the locator or locators, if there be more than one.

III. The date of location, and such description of said claim, with reference to some natural object or permanent monument, as will identify the claim.

IV. In the case of a lode claim, the direction and distance claimed along the course of the vein each way from the discovery shaft, cut or tunnel, with the width claimed on each side of the center of the vein.

V. In the case of a placer claim, the dimensions or area of the claim, and the location thereon on the discovery shaft, cut or tunnel.

VI. The locator and claimant, at his option, may also set forth, in such certificate of location, a description of the discovery work, the corner monuments and the markings thereon, and any other facts showing a compliance with the provisions of this law. Such certificate of location must be verified, before some officer authorized to administer oaths, by the locator, or one of the locators, if there be more than one, or by authorized Agent. In the case of a corporation, the verification may be made by any officer thereof, or by an authorized agent. When the verification is made by an Agent, the fact of the agency shall be stated in the affidavit. A certificate of location so verified, or a certified copy thereof, is *prima facie* evidence of all facts properly recited therein. [Act approved February 18, 1907, § 2.] (10th Sess. Chap. 16.)

2285. *Mill sites.*—Millsite claims may be located and recorded in the same manner as other claims, except that no discovery or discovery work is required. Where a millsite claim is appurtenant to a mining claim, the certificate of location of such millsite claim shall describe, by appropriate reference, the mining claim to which it is appurtenant. [Act approved February 18, 1907, § 3.] (10th Sess. Chap. 16.)

2286. *Relocation of abandoned claim.*—The re-locator of an abandoned or forfeited mining claim may adopt as his discovery any shaft or other working, existing upon such claim at the date

of the relocation, in which the vein, lode or deposit is disclosed, but, in such shaft or other working, he shall perform the same discovery work as is required in the case of an original location. [*Act approved February 18, 1907, § 4.*] (*10th Sess. Chap. 16.*)

2287. *Rights of relocater.*—The rights of a re-locator of any abandoned or forfeited mining claim, hereafter re-located, shall date from the posting of his notice of location thereon, and, while he is duly performing the acts required by law to perfect his location, his rights shall not be affected by any re-entry or resumption of work by the former locator or claimant. [*Act approved February 18, 1907, § 5.*] (*10th Sess. Chap. 16.*)

2288. *Amended location.*—A locator or claimant may, at any time, amend his location and make any change in the boundaries which does not involve a change in the point of discovery as shown by the discovery shaft by marking the location as amended upon the ground, and filing an amended certificate of location conforming to the requirements of an original certificate of location. A defect in a recorded certificate of location may be cured by filing an amended certificate. [*Act approved February 18, 1907, § 6.*] (*10th Sess. Chap. 16.*)

2289. *Relocation by owner.*—A locator or claimant may, at any time, re-locate his own claim for any purpose, except to avoid the performance of annual labor thereof, and, by such re-location, may change the boundaries of his claim, or the point of discovery, or both, but such relocation must comply, in all respects, with the requirements of this law as to an original location. [*Act approved February 18, 1907, § 7.*] (*10th Sess. Chap. 16.*)

2290. *Amendment or relocation not a waiver of acquired rights.*—Where a locator or claimant amends or re-locates his own claim, such amendment or relocation shall not be construed as a waiver of any right or title acquired by him by virtue of the previous location or record thereof, except as to such portions of the previous location as may be omitted from the boundaries of the claim as amended or re-located. As to the portion of ground included both in the original location and the location as amended or relocated, he may rely either upon the original location or the location as amended or re-located, or upon both. *Provided*, that nothing herein contained shall be construed as permitting the locator or claimant to hold a tract which does not include a valid discovery. [*Act approved February 18, 1907, § 8.*] (*10th Sess. Chap. 16.*)

2291. *Rights of third persons not affected.*—No amendment or re-location of a mining claim by the locator or claimant thereof shall interfere with the right of any third person existing at the time of such amendment or re-location. [*Act approved February 18, 1907, § 9.*] (*10th Sess. Chap. 16.*)

2292. *Validating locations heretofore made.*—All mining locations, made and recorded under the laws of this state, heretofore

in force, that in any respect have failed to conform to the requirements of such laws, shall, nevertheless, in the absence of the rights of third persons accruing prior to the passage of this Act, be valid if the making and recording of such locations conform to the requirements of this Act. [*Act approved February 18, 1907, § 10.*] (*10th Sess. Chap. 16.*)

2293. *Defective locations good against persons with notice.*—The period of time, prescribed by this law for the performance of any act, shall not be deemed mandatory where the act is performed before the rights of third persons have intervened, and no defect in the posted notice or recorded certificate shall be deemed material, except as against one who has located the same ground, or some portion thereof, in good faith and without notice. Notice to an agent, who makes a location in behalf of another, shall be deemed notice to his principal, and notice to one of several co-claimants shall be deemed notice to all. [*Act approved February 18, 1907, § 11.*] (*10th Sess. Chap. 16.*)

2294. *Effect of patent.*—The issuance of a United States Patent for a mining claim shall be deemed conclusive that the requirements of the laws of this state, relative to the location and record of such mining claim, have been duly complied with; *provided, however*, that where questions of priority are involved the date of the location shall be an issuable fact where it is claimed to have been prior to the date of the record of the location. [*Act approved February 18, 1907, § 12.*] (*10th Sess. Chap. 16.*)

2295. *Amended locations.*—If at any time the locator of any mining claim heretofore or hereafter located, or his successors or assigns, shall apprehend that his original declaratory statement was defective or erroneous, or that the requirements of law had not been complied with, or shall be desirous of changing his boundaries, or taking in any part of an overlapping claim which has been abandoned, or in case his original declaratory statement was filed prior to the passage of this law and he shall be desirous of securing the benefit of this act, such locator, or his successors or assigns, may file an additional or amended declaratory statement subject to the provisions of this act; *provided*, that such re-location or filing of the amended or additional declaratory statement, shall not interfere with the existing rights of others at the time of such re-location or filing of the amended or additional declaratory statement, and no such re-location or amended or additional declaratory statement, or other record thereof, shall preclude the claimant or claimants from proving any such title as he or they may have held under the previous location and notice thereof. [*Act approved March 15th, 1901.*] (*7th Sess. 56-7.*)

Wilson v. Freeman, 29 Mont. 471; 75 Pac. 84. A locator, who misdescribed his claim as running easterly and westerly, was entitled to file an amended

declaratory statement that the claim ran in a northerly and southerly direction, to correspond to the staking of the claim on the ground.

Butte C. M. C. v. Barker, 35 Mont. 337; 89 Pac. 302. An amended declaratory statement for the purpose of curing defects in the original relates back to the date of the original location. The name of a quartz lode mining claim in the original declaratory statement was "Annex." After the trial in an adverse

suit to the claim had commenced, an amended statement was filed consisting of the addition of the word "Plumber" to the first name. The affixing of the word "Plumber" to the name of the original claim did not invalidate the amended statement.

2296. *Effect of amended or declaratory statement.*—Any amended or additional declaratory statement which may have heretofore been filed by a locator, or his successors or assigns, shall have the same force and effect and be subject to the same terms and conditions as though the same had been filed under the provisions of Section one of this Act. [Act approved March 15th, 1901.] (7th Sess. 57.)

CHAPTER II.

RIGHTS OF WAY.

- Section 2297. Owners of mines have right of way.*
 " 2298. *Right of way for road or ditch.*
 " 2299. *Proceedings to obtain right of way.*
 " 2300. *Proceedings before the court.*
 " 2301. *Commissioners to be appointed.*
 " 2302. *Damage to be assessed by commissioners.*
 " 2303. *Report of commissioners may be set aside.*
 " 2304. *Right of way may be upon payment of damages assessed.*
 " 2305. *Appeal from the assessment of damages, how taken.*
 " 2306. *Trial on appeal.*
 " 2307. *Costs, how paid.*
 " 2308. *Final appeal may be taken to supreme court.*

2297. (§ 3630.) *Owners of mines have right of way.*—The owner of a mining claim held under the laws of the United States by patent or otherwise, or under the local laws and customs of the state, has a right of way over and across the land or mining claim, patented or otherwise, of another, as prescribed in this chapter.

M. O. P. Co. v. B. & M. Co., 25 Mont. 429; 65 Pac. 421.

2298. (§ 3631.) *Right of way for road or ditch.*—Whenever a mine or mining claim is so situated that it cannot be conveniently worked without a road thereto, or a ditch to convey water thereto, or a ditch or a cut to convey the water therefrom, or without a flume to carry water and tailings therefrom, or without a shaft or tunnel thereto, which road, ditch, cut, flume, shaft, or tunnel must necessarily pass over, under, through, or across any lands or mining claims owned or occupied by another, such owner is entitled to a right of way for said road, ditch, cut, flume, shaft or tunnel over, under, through and across the lands

or mining claims belonging to another, upon compliance with the provisions of this chapter.

2299. (§ 3632.) *Proceedings to obtain right of way.*—Whenever such owner desires to work a mine or mining claim, and it is necessary to enable him to do so successfully and conveniently, that he should have a right of way for any of the purposes mentioned in the foregoing sections; and, if such right of way has not been acquired by agreement between him and the owner of the land or claims, over, under, across, and upon which he seeks to establish such right of way, it is lawful for him to present to the judge of the district court a complaint asking that such right of way be awarded to him. The complaint must be verified and contain a particular description of the character and extent of the right sought, a description of the mine or mining claim of the owner, and the mining claim or claims and the lands to be affected by such right of way, with the names of the occupants or owners thereof, and may also set forth any tender or offer hereinafter mentioned.

2300. (§ 3633.) *Proceedings before the court.*—Upon the receipt of the complaint, and filing thereof with the clerk of the court, the judge must direct a summons to issue to the defendants named in the complaint, requiring them to appear before the judge on a day therein named, which must not be less than ten days from the service thereof, and show cause why such right of way should not be allowed; the summons may be served on each of the parties in the manner prescribed by law for serving summons in other actions.

2301. (§ 3634.) *Commissioners to be appointed.*—Upon the return of the summons, or upon any day to which the hearing is adjourned, the defendants may demur or answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties, and, if upon such hearing, he is satisfied that the claims of the plaintiff can only be conveniently worked by means of the privilege asked for, he must make an order, adjudging and awarding to the plaintiff such right of way, and must appoint three commissioners, disinterested persons and residents of the county, to assess the damages to the lands or claims affected by such order.

2302. (§ 3635.) *Damage to be assessed by commissioners.*—The commissioners must be sworn to faithfully and impartially discharge their duties, and must without delay examine the property, lands and claims, and assess the damages resulting from such right of way, and report the amount to the judge, and if such right of way affects the property of more than one person, such report must contain an assessment of damages to each person.

2303. (§ 3636.) *Report of commissioners may be set aside.*—For good cause shown the judge may set aside the report of the commissioners and appoint three other commissioners.

2304. (§ 3637.) *Right of way may be upon payment of damages assessed.*—Upon the payment of the sum assessed as damages, and all costs, to the persons to whom it is awarded, or the payment of the same to the clerk for the use of such person, plaintiff is entitled to the right of way, and may immediately proceed to occupy the same and to erect thereon such works and structures and make therein such excavations as may be necessary to the use and enjoyment of the right of way so awarded.

2305. (§ 3638.) *Appeal from the assessment of damages, how taken.*—An appeal from the assessment of damages made by the commissioners may be taken to the district court by any party interested at any time within ten days after the filing of the report of the commissioners. A written notice of appeal must be filed with the clerk and served upon the opposite party.

2306. (§ 3639.) *Trial on appeal.*—On appeal the question of the amount of damages may be tried by the court or jury as in other cases. If the appellant recovers damages exceeding the amount awarded by the commissioners, the opposite party must pay the costs of appeal, otherwise the appellant.

2307. (§ 3640.) *Costs, how paid.*—All costs and expenses of the proceedings under the provisions of this chapter, except as provided in the next preceding section, must be paid by the plaintiff or party making the application. The judge may, if the right of way asked for is denied, allow the opposite party a reasonable counsel fee.

2308. (§ 3641.) *Final appeal may be taken to supreme court.*—An appeal to the supreme court may be taken by either party, as in other cases.

TITLE X.

IRRIGATION DISTRICTS.

CHAPTER I. ORGANIZATION OF DISTRICT.

II. BOARD OF DIRECTORS.

III. CONSTRUCTION OF WORKS.

IV. DISTRICT BONDS.

V. ASSESSMENT OF BENEFITS.

VI. MISCELLANEOUS PROVISIONS.

CHAPTER I.

ORGANIZATION OF DISTRICT.

Section 2309. *Who may organize districts.*

“ 2310. *Petition for organization.*

“ 2311. *Hearing of application and order creating district.*

- Section 2312. *Appeal from board of county commissioners.*
 “ 2313. *Division of district directors.*
 “ 2314. *Election of directors.*
 “ 2315. *Board of directors.*
 “ 2316. *Qualified voters.*
 “ 2317. *Designation of polling places; ballots; expenses.*
 “ 2318. *Candidates for directors, how nominated; balloting.*
 “ 2319. *Duties of officers of election.*
 “ 2320. *Elections in districts lying within more than one county.*
 “ 2321. *Expenses of election must be repaid by district.*
 “ 2322. *Canvass of votes. Declaration of result.*
 “ 2323. *Record of order creating district.*
 “ 2324. *Contest of election.*
 “ 2325. *Term of office.*
 “ 2326. *Bond of directors.*
 “ 2327. *Vacancies.*
 “ 2328. *Organization of board; officers.*
 “ 2329. *Record of meetings.*

2309. *Who may organize districts.*—A majority in number of the holders of title, or evidence of title, to lands susceptible of irrigation from a common source and by the same system of works, such holders of title, or evidence of title, representing a majority in acreage of said lands, according to the county assessment roll or rolls for the year last preceding, may propose the organization of an irrigation district, under the provisions of this act. Said equalized assessment roll or rolls shall be sufficient evidence of title for the purposes of this act. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 70.*)

2310. *Petition for organization.*—In order to propose the organization of an irrigation district, a petition shall be presented to the board of county commissioners of the county in which the lands within the proposed district, or the greater portion thereof are situated, signed by the required number of holders of title, or evidence of title, to lands within such proposed district, and representing the requisite majority in acreage of said lands, which petition shall set forth the boundaries of the proposed district, and shall state generally the source from which said lands are proposed to be irrigated, and the character of the works proposed to be acquired or constructed for irrigation purposes, and shall pray that the territory embraced within the boundaries of the proposed district may be organized as an irrigation district under the provisions of this act. Said petition shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper of general circulation printed and published in the

county where said petition is presented, together with a notice stating the time of the meeting at which the same will be presented; and if any portion of the lands within said proposed district lie within another county or counties, then said petition and notice shall be published, as above provided, in a newspaper published in each of said counties. When such petition is presented, said board of county commissioners shall hear the same and may in their discretion adjourn such hearing from time to time, not exceeding four weeks in all. And on the final hearing said board shall make such changes in the proposed boundaries as may be deemed advisable, and shall define and establish such boundaries. But said board shall not modify said boundaries so as to exclude from such proposed district any territory which is susceptible of irrigation from a common source and by the same system of works applicable to the other lands in such proposed district; nor shall any lands which will not, in the judgment of said board, be benefitted by irrigation, by means of said system of works, be included within such proposed district. Any person whose lands are susceptible of irrigation from the same source and system of works, may, upon his application, in the discretion of said board, have such lands included within said proposed district. Lands of the district need not be contiguous, and any particular tract or tracts, irrespective of location in the district may be excluded, lands being accurately described in the final order made by said board. [*Act approved March 4, 1907, § 2.*] (*10th Sess. Chap. 70.*)

2311. *Hearing of application and order creating district.*—Upon such hearing of said petition the board of county Commissioners shall determine whether or not said petition complies with the requirements of §§ 2309 (1) and 2310 (2) of this act, and for that purpose must hear all competent and relevant testimony offered in support or in opposition thereto. If it is found by the board that such petition does not substantially comply with the requirements herein, or that the facts therein stated are not sustained by the evidence, then said board shall disallow said petition and shall make and enter an order to that effect; but if it is found that said petition substantially complies with the requirements of this act and that the facts therein stated are sustained by the evidence at such final hearing, then said board of county commissioners shall make and enter an order that an election shall be held in said district for the purpose of determining whether or not the same shall be organized under the provisions of this act and for the election of three directors as hereinafter provided. Said final order of the board allowing said petition shall contain an accurate description of each tract of land included within said district and no other boundaries of said district need be made. Said board shall also, in said

order allowing said petition, divide said district into three divisions as hereinafter provided. [*Act approved March 4, 1907, § 3.*] (*10th Sess. Chap. 70.*)

2312. *Appeal from Board of County Commissioners.*—The right of appeal from said order to the district court of the district where said petition is heard is hereby given to any persons interested or whose rights or property is affected by the action of said board of county commissioners. Such appeal shall be instituted and conducted in all manner as an original action; *provided*, that if more than one appeal be taken they shall be consolidated and tried together. Such appeal shall be taken within ten days after the entry of such order upon the minutes of the board of county commissioners. The appeal shall be taken and heard in the same manner as appeals from justice courts to the district court, except as herein otherwise provided. Upon the appeal, the district court shall make and enter its judgment affirming, modifying, or reversing the order appealed from. Within ten days thereafter the district court must cause its remittitur to issue to said board of county commissioners, and if said order of the board of county commissioners is modified or reversed the judgment of the district court in its remittitur shall direct the board of county commissioners what order it shall enter. Such remittitur shall be filed by the clerk of the board of county commissioners and at the first meeting of the board, which must be held not later than ten days thereafter, it shall cause to be entered in its minutes the order as directed by said district court. The appeal herein provided for shall be heard within thirty days from the time of filing in the district court and the same shall be determined without delay. [*Act approved March 4, 1907, § 4.*] (*10th Sess. Chap. 70.*)

2313. *Division of district directors.*—If on said final hearing, the petition is granted, said board shall make an order dividing said district into three divisions, as nearly equal in size as may be practicable, which shall be numbered first, second and third, and one director shall be elected for each division by the electors thereof. [*Act approved March 4, 1907, § 5.*] (*10th Sess. Chap. 70.*)

2314. *Election of directors.*—Said board of county commissioners shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provisions of this act, and for the election of three directors. Such notice shall not be published for at least ten days after the making of such original order by the board allowing said petition, and if any appeal is taken within said ten days, said notice shall not be published until the final determination of said cause on appeal when said board of county commissioners shall then fix the day

of election and cause the publication of such notice. Such notice shall designate a name for the proposed district, and said notice shall be published for at least three weeks previous to such election, in a newspaper published within the county in which the petition for the organization of the proposed district was presented; and if any portion of such proposed district is within another county or counties, then such notice shall be published for the same length of time in a newspaper published in each of said counties. The board of county commissioners shall furnish ballots on which shall be printed the words "Irrigation District—Yes," and "Irrigation District—No" or words equivalent thereto, and also the names of persons to be voted for at said election. For the purpose of said election the board of county commissioners must establish a convenient number of election precincts in said proposed district, and define the boundaries of the same. Such election shall be conducted as nearly as practicable in accordance with the general election laws of the state and judges and clerks shall receive the same compensation allowed by law in regular elections. [*Act approved March 4, 1907, § 6.*] (*10th Sess. Chap. 70.*)

2315. *Board of Directors.*—At such election there shall be elected a board of three directors. One director to be elected in each division of the district. [*Act approved March 4, 1907, § 7.*] (*10th Sess. Chap. 70.*)

2316. *Qualified voters.*—Any taxpayer holding title or evidence of title, or any duly authorized and qualified guardian, executor or administrator of an estate, or the duly authorized agent of any corporation or company owning land within any irrigation district, shall be deemed qualified to sign any document or petition, or to vote at any election authorized under this act if not otherwise disqualified under the laws or constitution of the state. [*Act approved March 4, 1907, § 8.*] (*10th Sess. Chap. 70.*)

2317. *Designation of polling places; ballots; expenses.*—The board of county commissioners shall designate the polling places and appoint three judges of election in each precinct. The board shall also provide printed ballots and arrange all other details of said election. All expenses shall be paid in the same manner as the expenses in regular county and state elections, but for all such expenditures the county shall be reimbursed by the district as hereinafter provided. [*Act approved March 4, 1907, § 9*] (*10th Sess. Chap. 70.*)

2318. *Candidates for directors; how nominated; balloting.*—All candidates for the office of director shall be nominated by petition filed with the county clerk at least ten days prior to any election and signed by not less than ten free holders of the district, and the names of all candidates for each division of the

district shall be printed on the same ballot. In voting, the ballots shall be marked in the same manner as in regular county and state elections, and each elector shall be permitted to cast one vote for each forty acres of irrigable land or major fraction thereof owned by such elector in the division where his ballot is cast, but any elector owning less than twenty acres shall be entitled to cast one vote. [*Act approved March 4, 1907, § 10.*] (*10th Sess. Chap. 70.*)

2319. *Duties of officers of election.*—The officers of election shall be sworn as in regular elections and shall certify the result of the election to the Board of County Commissioners. They shall keep a correct list of the names of all who vote with the number of votes cast by such person and this list together with the ballots shall be sealed and delivered to the County Clerk and Recorder of the County where the petition is filed, who shall keep the same like other election returns. [*Act approved March 4, 1907, § 11.*] (*10th Sess. Chap. 70.*)

2320. *Elections in districts lying within more than one county.*—Where the lands of a district lie within more than one county all petitions, papers, documents or other instruments except evidence of title or proceedings, as hereinafter provided, shall be filed, or proceedings had, in the county containing the greater portion of said district, and all the work of establishing the district, arranging the details of election and other duties prescribed by this act shall be performed by the county officials of the county wherein the greater portion of the lands of the district lie. [*Act approved March 4, 1907, § 12.*] (*10th Sess. Chap. 70.*)

2321. *Expenses of election must be repaid by district.*—The County Commissioners shall keep a correct account of all expenses incident to said election and the same shall become a tax upon the district to be apportioned among the lands of the district and collected with other taxes as hereinafter provided, and after the collection of said taxes the amount expended by the Board of Commissioners in conducting any such district elections shall be repaid to the county from the funds belonging to such district. [*Act approved March 4, 1907, § 13.*] (*10th Sess. Chap. 70.*)

2322. *Canvass of votes. Declaration of result.*—The board of county commissioners shall meet on the second Monday succeeding such election, and shall proceed to canvass the votes cast thereat, and if upon such canvass it appears that at least two thirds of all the votes cast are "Irrigation District—Yes," said board shall, by an order entered on its minutes declare the territory duly organized as an irrigation district, under the name theretofore designated, and shall declare the persons receiving respectively the highest number of votes at said election to be duly elected. Said order shall accurately set forth the boundaries

of said district as heretofore defined, and a description of the lands composing the same. [*Act approved March 4, 1907, § 14.*] (*10th Sess. Chap. 70.*)

2323. *Record of order creating district.*—Said board shall then cause a copy of such order, duly certified, to be immediately filed for record in the office of the county clerk and recorder of any county in which any portion of the lands embraced in such district are situated, and must also immediately forward a copy thereof to the clerk of the Board of County Commissioners of each of said last-mentioned counties, and no Board of County Commissioners of any county in which any portion of the lands embraced in such district shall, after the date of the organization thereof, allow another district to be formed including any portion of said lands, without the consent of the board of directors of the district in which they are situated. From and after such filing the organization of such district shall be complete. [*Act approved March 4, 1907, § 15.*] (*10th Sess. Chap. 70.*)

2324. *Contest of election.*—Such election, or organization, may be contested by any person owning property within the proposed district liable to assessment. The directors elected at such election shall be made parties defendant. Such contest shall be brought in the district court of the county where the petition for organization is filed; *provided*, that if more than one contest be pending they shall be consolidated and tried together. The court having jurisdiction shall speedily try such contest, and determine, upon the hearing, whether the election was fairly conducted and in substantial compliance with the requirements of this act, and enter its judgment accordingly. Such contest must be brought within twenty days after the canvass of the vote and declaration of the result by the Board of County Commissioners. The right of appeal is hereby given to either party to the record withing thirty days from entry of judgment. The appeal must be speedily heard and determined by the supreme court. [*Act approved March 4, 1907, § 16.*] (*10th Sess. Chap. 70.*)

2325. *Term of office.*—The officers elected at the election hereinbefore provided for shall immediately enter upon their duties as such, upon qualifying in the manner for such officers herein provided. Said officers shall hold office for one year or until their successors are elected and qualified. [*Act approved March 4, 1907, § 17.*] (*10th Sess. Chap. 70.*)

2326. *Bond of directors.*—The directors shall qualify in the same manner as justices of the peace and each shall give a bond in the sum of two thousand dollars for the faithful performance of his duties, said bond to be payable to the state for the benefit of the district. [*Act approved March 4, 1907, § 18.*] (*10th Sess. Chap. 70.*)

2327. *Vacancies.*—In case of a vacancy in the Board of Directors from any cause, such vacancy shall be filled by appointment by the County Commissioners. The appointee to hold office until his successor is elected and qualified. [*Act approved March 4, 1907, § 19.*] (10th Sess. Chap. 70.)

2328. *Organization of Board; officers.*—The Board of Directors shall meet within ten days after election and shall organize by the election of one of their number as President, they shall also elect a Secretary, who may or may not be a member of the board. The compensation of the Secretary and all other employees authorized under this act shall be fixed by the Board. [*Act approved March 4, 1907, § 20.*] (10th Sess. Chap. 70.)

2329. *Record of meetings.*—All meetings of the board shall be public and a complete record of all proceedings shall be kept. [*Act approved March 4, 1907, § 21.*] (10th Sess. Chap. 70.)

CHAPTER II.

BOARD OF DIRECTORS.

- Section 2330. *Powers of Boards of Directors.*
 “ 2331. *Change of boundaries.*
 “ 2332. *Annual election.*
 “ 2333. *Notice of annual election.*
 “ 2334. *Conduct of annual election.*
 “ 2335. *Method of voting.*
 “ 2336. *Canvass of returns.*
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 “ 2339. *Compensation of officers.*
 “ 2340. *Directors must not be interested in contracts.*
 “ 2341. *Elections for special assessments.*
 “ 2342. *Powers of Board to contract debts.*
 “ 2343. *Change of boundaries.*
 “ 2344. *Extension of boundaries.*
 “ 2345. *Leasing of canals or waters.*
 “ 2346. *The use of water and rights of way declared to be a public use.*
 “ 2347. *Legal title to property held by the district.*
 “ 2348. *Apportionment of water.*
 “ 2349. *Reduction of apportionment in cases of shortage of water.*
 “ 2350. *Surplus water should be sold.*
 “ 2351. *Disposition of lands already under irrigation.*
 “ 2352. *Same. Such lands not to be charged with assessment for construction.*

2330. *Powers of Board of Directors.*—The board shall have the power, and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers and employes as may be required and prescribe their duties. The board and its agents and employes shall have the right to enter upon any land to make surveys, and may locate the necessary irrigation works and the line for any canal or canals, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to appropriate water in the name of the district and to acquire, either by purchase or condemnation, or other legal means, all lands, and waters, and water rights, and other property necessary for the construction, use, supply, maintenance, repair, and improvements of said canal or canals, and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. But no purchase of any waters, or water rights, or canals, or reservoirs, or reservoir sites, or irrigation works, or other real property of any nature or kind for any price in excess of ten thousand dollars shall be final or binding on the district, nor shall the purchase price thereof be paid until a petition of a majority of the holders of title, or evidence of title to lands within the district, such holders of title or evidence of title, representing a majority in acreage of said land, subject to assessment for district purposes, according to the last assessment roll of the district, shall have been filed with the board and an order of the board made thereon confirming such purchase. Said board may also construct the necessary dams, reservoirs, and works for the collection of water for said district, and any and every lawful act necessary to be done, that sufficient water may be furnished to each land owner in said district for irrigation purposes. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such irrigation district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect or preserve any and all rights, privileges, and immunities created by this act, or acquired in pursuance thereof. And in all courts, suits, or proceedings, the said board may sue, appear and defend in person or by attorneys, and in the name of such irrigation district. It shall be the duty of said board to establish equitable by-laws, rules and regulations for the distribution and use of water among the owners of said

lands, which must be printed in convenient form for distribution in the district. Said board shall have power generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. [Act approved March 4, 1907, § 22.] (10th Sess. Chap. 70.)

2331. *Change of boundaries.*—The board of directors, when they deem it advisable for the best interests of the district, and the convenience of the electors thereof, may at any time, but not less than sixty days before an election to be held in the district, change the boundaries of the divisions and election precincts of the district; *provided*, that such changes shall be made to keep each division as nearly equal in area and population as may be practicable. Such change of boundaries of the divisions must be shown on the minutes of the board, and a certified copy of the same shall be filed for record in the office of the County Clerk and Recorder in the County containing the divisions where such changes are made. [Act approved March 4, 1907, § 23.] (10th Sess. Chap. 70.)

2332. *Annual election.*—The directors in each district, excepting the board first elected shall be elected on the third Tuesday in February of each year, and on the first Tuesday in March next following their election the directors who shall have been elected at the general February election, shall meet and organize as a board, elect a President and appoint a Secretary, who shall each hold office during the pleasure of the board. [Act approved March 4, 1907, § 24.] (10th Sess. Chap. 70.)

2333. *Notice of annual election.*—Fifteen days before any election held under this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notice to be posted in three public places in each election precinct, of the time and place of holding the election, and also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place, to be determined by said board, specifying the polling-places of each precinct. Prior to the time for posting the notices the board must appoint for each precinct, from the electors thereof, three judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held. [Act approved March 4, 1907, § 25.] (10th Sess. Chap. 70.)

2334. *Conduct of annual election.*—The judges may administer all oaths required in the progress of an election; and appoint judges and clerks, if, during the progress of the election any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at eight o'clock on the morning of the election, and be kept open until five p. m. when the same must be closed. [*Act approved March 4, 1907, § 26.*] (*10th Sess. Chap. 70.*)

2335. *Method of voting.*—Voting may commence as soon as the polls are opened and may be continued during all the time the polls remain opened, and such election shall be conducted as provided in § § 2314 (6) to 2319 (11) inclusive of this act and as nearly as practicable, in accordance with the provisions of the general election laws of this state. As soon as all the votes are counted, a certificate shall be drawn upon each of the papers containing the poll lists and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the clerks and judges. One of said certificates, with the poll lists and the tally paper to which it is attached, shall be retained by one of the judges, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the judges during the counting thereof, in the order in which they were entered upon the tally list by the clerks; and said ballots, together with the other of said certificates, with the poll list and tally to which it is attached shall be sealed by the judges and clerks, and endorsed "Election returns of (naming the precinct) precinct," and be directed to the clerk of the Board of County Commissioners, and shall be immediately delivered by the judges, or some other safe and responsible carrier designated by said judges, to said county clerk, and the ballots shall be kept in the same manner as ballots in other elections. [*Act approved March 4, 1907, § 27.*] (*10th Sess. Chap. 70.*)

2336. *Canvass of returns.*—No list, tally paper, or certificate returned from any election, shall be set aside or rejected for want of form, if it can be satisfactorily understood. The Board of County Commissioners must meet on the first Monday after each election to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were

opened have been received, the Board of County Commissioners must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof. [Act approved March 4, 1907, § 28.] (10th Sess. Chap. 70.)

2337. *Certificates of election.*—The Board of County Commissioners must declare elected the persons having the highest number of votes given for each office. The County Clerk must immediately make out and deliver to such person a certificate of election, signed by him, and authenticated with the seal of the board. [Act approved March 4, 1907, § 29.] (10th Sess. Chap. 70.)

2338. *Qualification of directors.*—A director shall be a free holder of the irrigation district, and of the division for which he is elected, but not necessarily a resident of the district. [Act approved March 4, 1907, § 30.] (10th Sess. Chap. 70.)

2339. *Compensation of officers.*—The directors, when sitting as a board, or acting under the orders of the board, shall each receive not to exceed three dollars per day, and actual and necessary expenses paid while engaged in official business under the order of the board. The board shall fix the compensation to be paid to all officers named in this act, to be paid out of the funds of the district; *provided*, that such board shall, upon the petition of at least fifty, or a majority of the freeholders within such district, therefor, submit to the electors at any general district election a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board not less than twenty days nor more than forty days prior to a general district election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this act. In all elections after the organization of a district has been completed, the board of directors shall provide the ballots and arrange all the details of such election. [Act approved March 4, 1907, § 31.] (10th Sess. Chap. 70.)

2340. *Directors must not be interested in contracts.*—No director or any other officer named in this act shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor, and his conviction thereof shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in

the county jail not exceeding six months, or by both such fine and imprisonment. [*Act approved March 4, 1907, § 32.*] (*10th Sess. Chap. 70.*)

2341. *Elections for special assessments.*—The board of directors, may, at any time, when in their judgment it may be deemed advisable, call a special election and submit to the qualified electors of the district the question, whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held and the result thereof determined and declared in all respects in conformity with the provisions of § 2314 (6) of this act. The notice must specify the amount of money proposed to be raised and the purpose for which it is intended to be used. At such elections the ballots shall contain the words, "Assessment—Yes," and "Assessment—No." If two thirds or more of the voters cast are "Assessment—Yes," the board shall, at the time of the annual levy hereunder, levy an assessment sufficient to raise the amount voted. [*Act approved March 4, 1907, § 33.*] (*10th Sess. Chap. 70.*)

2342. *Powers of Board to contract debts.*—The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act; and any debt or liability incurred, in excess of such express provisions shall be and remain absolutely void, except that for the purpose of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding, in the aggregate the sum of two thousand dollars, and may cause warrants of the district to issue therefor, bearing interest at seven per centum per annum. [*Act approved March 4, 1907, § 34.*] (*10th Sess. Chap. 70.*)

2343. *Change of boundaries.*—The boundaries of any irrigation district hereafter organized under the provisions of this act may be changed in the manner herein prescribed; but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made. [*Act approved March 4, 1907, § 35.*] (*10th Sess. Chap. 70.*)

2344. *Extension of boundaries.*—The boundaries of any irrigation district may be extended at any time to include lands susceptible of irrigation from the same works, *provided, however,* that a petition be presented to the board of directors, asking for such

extension, signed by at least two-thirds of the holders of title or evidence of title, such holders of title, or evidence of title representing not less than two-thirds of said lands in acreage according to the last assessment. When such petition is presented the board shall appoint a day for a public hearing which shall be published for at least two weeks in the newspaper published nearest the land. At such public hearing the board shall hear those who may desire changes made in the proposed extension either to include other lands or to exclude any lands from the proposed extension. Such public hearing may be adjourned from day to day not exceeding ten days in all and at the final hearing the board shall make an order either granting or denying said petition, and if said petition is granted, the lands included in said extension shall be accurately described in said order and a copy of said order shall be filed with the county clerk and recorder in the county wherein said lands are situate. The right of appeal to the district court is hereby given to any person in interest said appeal to proceed in the manner provided in Section 2312 (4) of this act. [*Act approved March 4, 1907, § 36.*] (*10th Sess. Chap. 70.*)

2345. *Leasing of canals or waters.*—The board of directors shall have the power, and such board is hereby vested with authority to lease the system of canals and works or water belonging to the district, whenever such leasing may be for the benefit of the district *provided*, that when the directors of any irrigation district contemplate the leasing of the canals or works, or water of such district, they shall give notice of such contemplation by publishing the same in some newspaper published in the county in which such irrigation district lies, at least three weeks prior to the making of any lease, and such lease shall be made to the highest bidder. But such board shall have the right to reject any and all bids. Such lease shall in no way interfere with any rights that may have been established by law at the time such lease is made; *and further provided*, that the board of directors shall require a good and sufficient bond to secure the faithful performance of the lease by the lessees. [*Act approved March 4, 1907, § 37.*] (*10th Sess. Chap. 70.*)

2346. *The use of water and rights of way declared to be a public use.*—The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, together with the rights of way for canals and ditches, sites for reservoirs, and all property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulation and control of the state, in the manner prescribed by law. [*Act approved March 4, 1907, § 38.*] (*10th Sess. Chap. 70.*)

2347. *Legal title to property held by the district.*—The legal

title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided. [*Act approved March 4, 1907, § 39.*] (*10th Sess. Chap. 70.*)

2348. *Apportionment of water.*—The board of directors shall apportion the water for irrigation among the lands in the district in a just and equitable manner and the maximum amount apportioned to any land shall be the amount that can be beneficially used on said land, and this amount of water shall become and shall be appurtenant to the land and inseparable from the same, *provided, however*, that any water owner of the district shall have the right to sell or assign for one season any portion of the water not required for use upon the land to which such water belongs. [*Act approved March 4, 1907, § 40.*] (*10th Sess. Chap. 70.*)

2349. *Reduction of apportionment in case of shortage of water.*—In the event of a shortage of water, the amount of water delivered to each particular tract or piece of land shall be reduced in proportion to the amount of water belonging to such land under a full head, share and share alike. [*Act approved March 4, 1907, § 41.*] (*10th Sess. Chap. 70.*)

2350. *Surplus water should be sold.*—All surplus water shall belong to the district and shall be sold or disposed of by the board for the benefit of the district. [*Act approved March 4, 1907, § 42.*] (*10th Sess. Chap. 70.*)

2351. *Disposition of lands already under irrigation.*—Any lands already under irrigation either from the same or another source may be included in any district either at the time of the organization of such district or at any time thereafter and such lands shall be entitled to receive and shall be given the same amount of water necessarily used on said lands prior to the construction of such district works, and the canals, ditches, flumes, dams, or other works previously used to irrigate such lands may be used or supplanted either wholly or in part by the district works, *provided, however*, that the owner of such lands, canals, ditches, flumes, dams or other works shall be entitled to compensation for any and all damage sustained by reason of the appropriation of the same or by the construction of said district works. Wherever any canal constructed by the district crosses one or more creeks, the water of which are used to irrigate land lying below such canal, the district shall have the right to supply such lands below the canal, whether such lands are included in

the district or not, with water from the canal and the owner or lessee of such land shall in such case be furnished with the same quantity of water as that to which he would be entitled out of the creek had the district works not been built. The district shall have the right to take possession of the water so replaced and shall have the same right to such water as the owner of the land had, and the district shall also have the right to change the point of diversion and to sell, lease or use such water on any land either above or below the canal and such change of point of diversion or selling or leasing or using shall not prejudice the right of the district to the water and shall not increase the rights of any other water right on the creek. The Board of Directors shall have and is hereby given the right to include any lands in the district either by an extension of the district as provided in Section 2344 (36) of this Act, or by proceedings instituted in the district court having jurisdiction, but nothing herein contained shall be deemed to authorize such district to appropriate or damage any lands or other property or to interfere with any vested right without first having acquired the right to do so in the manner provided by law for the taking of private property for public use. [Act approved March 4, 1907, § 43.] (10th Sess. Chap. 70.)

2352. *Same. Such lands not to be charged with assessment for construction.*—Where lands already under irrigation are included in any district the water and irrigation works irrigating the same belonging to the owner of said lands, such lands shall not be charged with any assessment for construction, or for payment of the interest or principal of any bonds issued to secure money for construction of such district irrigation works, but such lands shall be assessed for administrative and maintenance purposes as other lands in the district. [Act approved March 4, 1907, § 44.] (10th Sess. Chap. 70.)

CHAPTER III.

CONSTRUCTION OF WORKS.

Section 2353. *Awarding contracts for construction.*

“ 2354. *Contracts for construction not to be let until bonds have been sold.*

“ 2355. *Directors shall require bonds for performance of contracts.*

“ 2356. *Directors shall have power to construct irrigation works across streams, highways and canals.*

“ 2357. *Same.*

“ 2358. *Streams not to be diverted to the detriment of prior rights.*

“ 2359. *Property belonging to district not subject to taxation.*

2353. *Awarding contracts for construction.*—The construction of all irrigation works of every kind whatsoever, amounting to five thousand dollars or more shall be done by contract and before any such contract is let the board of directors shall employ competent engineers to make surveys, plans, maps and estimates of the work to be done and such surveys, plans, maps and estimates shall include everything necessary to show the entire cost in detail of everything necessary to complete the works required to irrigate all of the irrigable lands under the proposed system. Notice of any contract to be awarded shall state where plans and specifications may be seen and shall be published at least once a week for three successive weeks in a newspaper published in the county containing the greater portion of the district. Sealed bids shall be called for in such published notice and bids shall be opened in public and the contract, if awarded, shall be awarded to the lowest responsible bidder who shall be required to give bond for the faithful performance and completion of the contract. The construction of every such irrigation works including all labor and material necessary to complete the same shall be let in one contract and no such contract shall be entered into by the board of directors until sufficient funds have been secured for the district to discharge the obligation of the contract in full. [Act approved March 4, 1907, § 45.] (10th Sess. Chap. 70.)

2354. *Contracts for construction not to be let until bonds have been sold.*—Where funds are to be raised by the issuance of bonds for the construction of irrigation works, the contract for the construction of such works shall not be awarded until such bonds have been sold and the money received therefor. *Provided, however,* that the board of directors may in their discretion receive proposals for the construction of said irrigation works giving bonds at par to the contractor or contractors in payment for the construction of the works, which contract shall include all labor and material required to fully complete the works. Notice of the awarding of such contract and the terms and conditions thereof shall be duly published as provided in § 2353 (45) of this Act. [Act approved March 4, 1907, § 46.] (10th Sess. Chap. 70.)

2355. *Directors shall require bonds for performance of contracts.*—The board of directors shall require good and sufficient security upon any and every contract or award to insure the full and faithful performance of the same. [Act approved March 4, 1907, § 47.] (10th Sess. Chap. 70.)

2356. *Directors shall have power to construct irrigation works across streams, highways and canals.*—The board of directors shall have power to construct the said irrigation works across any stream of water, water-course, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal or canals

may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same, when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersection and crossing; and if such railroad company and said board, or the owners and controllers of the said property, thing or franchise so to be crossed, cannot agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land for public use. But nothing herein contained shall require the payment to the State, or any subdivision thereof, of any sum for the right to occupy or cross any public highway with any such works. The right of way is hereby given, dedicated, and set apart, to locate, construct, and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this State within the district. [*Act approved March 4, 1907, § 48.*] (*10th Sess. Chap. 70.*)

2357. *Same.*—Navigation shall never in any wise be impaired by the operation of this act, nor shall any vested interest in or to any mining water rights or ditches, or in or to any water rights, or reservoirs or dams now used beneficially by the owners or possessors thereof in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used, directly or indirectly, in carrying on or promoting the mining industry, ever be affected by or taken under its provisions save and except that the rights of way may be acquired over the same. [*Act approved March 4, 1907, § 49.*] (*10th Sess. Chap. 70.*)

2358. *Streams to be diverted to the detriment of prior rights.*—Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this state authorizing the taking of private property for public uses. [*Act approved March 4, 1907, § 50.*] (*10th Sess. Chap. 70.*)

2359. *Property belonging to district not subject to taxation.*—The rights of way, ditches, flumes, pipe-lines, dams, water rights, reservoirs, and other property of like character, belonging to any irrigation district shall not be taxed for state and county or municipal purposes. [*Act approved March 4, 1907, § 51.*] (*10th Sess. Chap. 70.*)

CHAPTER IV.

DISTRICT BONDS.

- Section 2360. Submission of question to electors.*
“ 2361. *Term of bonds.*
“ 2362. *Bonds to be lien upon lands in the district.*
“ 2363. *Plans and specifications of works must be adopted before bonds are voted.*
“ 2364. *Bonds not to be sold for less than par.*
“ 2365. *Form of bond.*
“ 2366. *Proceeds of sales of bonds.*
“ 2367. *Assessment to pay bonds and interest.*
“ 2368. *Extension of boundaries; assumption of debt.*
“ 2369. *Proceedings for issuance and sale of bonds covered by extension.*
“ 2370. *Special assessments to pay debts.*
“ 2371. *Sinking fund.*
“ 2372. *Actions.*

2360. *Submission of question to electors.*—For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district may at any time call a special election, at which shall be submitted or may submit at any regular district election to the electors of such district, possessing the qualifications prescribed by this act, the question whether or not the bonds of said district in the amount as set forth in said petition shall be issued. At such election each elector shall be entitled to cast the number of votes as provided in § 2318 (10) of this act. Notice of such election must be given by posting in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided* that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such elections the ballots shall contain the words “Bonds—Yes,” and “Bonds—No,” or words equivalent thereto. The result of such election shall be declared and entered of record on the minutes of the board of directors. If the majority of the votes cast are “Bonds—Yes,” the board of directors shall cause bonds in said amount to be issued. In the event that said

bonds are voted to be issued, the board of directors shall enter on its records at length all facts in relation to said election and the notices thereof and a copy of the minutes of said board pertaining to said election duly verified by the President and Secretary shall be filed for record in the office of the County Clerk and such record shall be accepted in any court in this State as establishing *prima facie* the facts therein contained. [*Act approved March 4, 1907, § 52.*] (10th Sess. Chap. 70.)

2361. *Term of bonds.*—All bonds issued under the provisions of this act shall be payable in gold coin of the United States and shall be payable thirty years after date with privilege reserved to the district of paying after twenty years. Said bonds to bear interest at a rate not to exceed seven per cent per annum, which shall be payable at such place and such times as may be fixed by the board of directors. [*Act approved March 4, 1907, § 53.*] (10th Sess. Chap. 70.)

2362. *Bonds to be lien upon lands in the district.*—All bonds issued under authority of this act shall be a lien upon the particular lands for the irrigation of which said bonds are issued; and all such lands shall be liable for the payment of both principal and interest of said bonds. Each particular tract or parcel of land being liable in proportion to the amount assessed against such piece or parcel of land under this Act. [*Act approved March 4, 1907, § 54.*] (10th Sess. Chap. 70.)

2363. *Plans and specifications of works must be adopted before bonds are voted.*—Before calling an election on the question of issuing bonds the board of directors shall first employ competent engineers to make surveys, plans, specifications and estimates of the proposed irrigation works and the bonds voted on must be sufficient in amount to fully complete the proposed works of irrigation. [*Act approved March 4, 1907, § 55.*] (10th Sess. Chap. 70.)

2364. *Bonds not to be sold for less than par.*—The bonds of any district shall never be sold for less than par. [*Act approved March 4, 1907, § 56.*] (10th Sess. Chap. 70.)

2365. *Form of bond.*—Said bonds shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. Each issue shall be numbered consecutively, and bear date at the time of the issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their face that they were issued by authority of this Act, stating its title and date, of approval and shall also state the number of the issue of which such bonds are a part. The secretary and the county clerk and recorder shall each keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser. [*Act approved March 4, 1907, § 57.*] (10th Sess. Chap. 70.)

2366. *Proceeds of sales of bonds.*—In the event that bonds are sold for cash said bonds shall be delivered to the County Treasurer of the County wherein said district is organized, who shall deliver them to the purchaser after making a complete record of the same. The said County Treasurer shall receive the money for said bonds from the purchaser, and shall be the custodian of the same. Said money shall be paid out by the County Treasurer only upon the written order of the board of directors, signed by the President and Secretary. Said money shall be expended for the purposes for which said bonds were voted and for no other. [Act approved March 4, 1907, § 58.] (10th Sess. Chap. 70.)

2367. *Assessments to pay bonds and interest.*—Said bonds, and the interest thereon shall be paid, by revenue derived from an annual assessment upon the land of the district; and all the land in the district at the time said bonds are issued shall be and remain liable to be assessed for such payment as hereinafter provided. [Act approved March 4, 1907, § 59.] (10th Sess. Chap. 70.)

2368. *Extension of boundaries; assumption of debt.*—Where a district is extended after the construction of works of irrigation, to include other irrigable lands, the director shall fix the just amount which said new portion shall pay to the older portion of the district toward the cost of such original works of irrigation. The landowners in the new portion of the district shall have power to issue bonds which shall relate only to the lands in said new portion of the district and the directors may accept said bonds or any portion thereof in payment of the amount due the older portion of the district from the new portion. The remainder of said bonds if any, shall be used to extend the works of irrigation into the new portion of the district. All assessments for the payment of both principal and interest of said issue of bonds shall be made against the lands in the new portion of the district, which said lands shall be particularly described in an order of the board of directors, filed of record in the office of the County Clerk and Recorder in the County in which the lands are situated. [Act approved March 4, 1907, § 60.] (10th Sess. Chap. 70.)

2369. *Proceedings for issuance and sale of bonds covered by extension.*—All proceedings had for the issuance and sale of bonds or construction of works of irrigation as authorized in the last two preceding sections, shall be conducted in the same manner and form as provided in this act for original districts. And such bonds shall be in all respects similar to regular district bonds, except that the words "first extension" (or if more than one issue of such bonds are voted, the word "first" shall be changed to correspond with the number of the extension) shall be printed

on the face of such bonds. [*Act approved March 4, 1897, § 61.*] (*10th Sess. Chap. 70.*)

2370. *Special assessments to pay debts.*—Where a district is extended to include other lands the landowners in the new portion shall have the option of paying the amount found to be due the original district, either in bonds or in cash realized from a special assessment levied upon the lands in the new portion of the district. Such special assessment shall be levied after a petition praying for the same and signed by at least ninety per cent of the landowners in interest shall have been presented to the board. In the event that the money for such payment is not raised by special assessment the board of directors shall call an election of the landowners in the new portion of the district at which the question of issuing bonds shall be voted on, and if at said election a majority of the votes cast are in the affirmative, the board shall proceed as otherwise provided in this act, but if a majority of the votes cast at said election are in the negative no further proceedings shall be had, and the boundaries of the district shall not be extended. [*Act approved March 4, 1907, § 62.*] (*10th Sess. Chap. 70.*)

2371. *Sinking fund.*—All money or bonds received by any district on account of the original cost of irrigation works, either from new portions of the district or from other sources, shall be placed to the credit of the sinking fund to pay the bonds of the district outstanding, but if there be no bonds outstanding, then such credit shall go to the maintenance fund. [*Act approved March 4, 1907, § 63.*] (*10th Sess. Chap. 70.*)

2372. *Actions.*—Any party interested shall have and is hereby granted the right to institute and maintain an action in the district court of the County in which the land or property affected is situated for the purpose of having reversed, modified, changed or set aside any order or act of the board of directors in any manner whatsoever. If such land affected by such order is situate in more than one county then action shall be brought in the county where the owner thereof resides, or if he resides in neither of said counties, then said action shall be brought in the county containing the greater portion of the land affected. If more than one action shall be pending at the same time involving the same question, such actions may, in the discretion of the court, be consolidated and tried together. [*Act approved March 4, 1907, § 64.*] (*10th Sess. Chap. 70.*)

CHAPTER V.

ASSESSMENT OF BENEFITS.

Section 2373. *Annual assessments. Basis of valuation.*

“ 2374. *What assessments must cover.*

“ 2375. *Lands must be taxed at the same rate.*

- Section 2376. Notice of assessment.*
“ 2377. *Equalization.*
“ 2378. *Assessment for sinking fund.*
“ 2379. *Investment of sinking fund.*
“ 2380. *Funds for the payment of separate series of bonds must be kept separate.*
“ 2381. *Redemption of bonds.*
“ 2382. *County Treasurer custodian of district funds.*
“ 2383. *Directors must furnish County Treasurer the details of assessment.*
“ 2384. *Assessment of lands lying in more than one county.*
“ 2385. *Sales for delinquent taxes.*
“ 2386. *Distribution of funds; liability of Treasurer.*
“ 2387. *Bonds to complete or improve irrigation works; election.*
“ 2388. *Special assessments.*
“ 2389. *Sales of lands subject to lien.*
“ 2390. *Method of valuation.*
“ 2391. *Owners may pay cash upon completion of work.*
“ 2392. *Actions to determine validity of assessment.*
“ 2393. *Consolidation of actions.*
“ 2394. *Pleading and practice.*

2373. *Annual assessment. Basis of valuation.*—The Board of Directors shall annually assess all lands in the district fixing the value of each particular tract according to the value of such tract for irrigation irrespective of improvements and such valuation for irrigation shall be fixed according to the increased value of such tract by reason of such irrigation as compared to other irrigated lands in the district. [Act approved March 4, 1907, § 65.] (10th Sess. Chap. 70.)

2374. *What assessments must cover.*—The annual assessment of all district lands shall be completed on or before the second Monday in July of each year and the Board of Directors shall within ten days thereafter fix the levy for all district purposes and such levy shall be divided as follows: To pay general and administrative expenses of the district including expenses of the first election and all warrants outstanding for preliminary work. To pay any special assessment theretofore ordered at any district election. To pay all charges for maintenance and repairs. To pay interest on bonds and for a sinking fund to redeem such bonds. [Act approved March 4, 1907, § 66.] (10th Sess. Chap. 70.)

2375. *Lands must be taxed at the same rate.*—All lands in each district shall pay at the same rate for all purposes for which such lands are chargeable and the total amount to be paid by

each tract shall be in proportion to the assessed value of such tract as fixed by the Board of Directors. [*Act approved March 4, 1907, § 67.*] (*10th Sess. Chap. 70.*)

2376. *Notice of assessment.*—The Board of Directors of each district shall mail to each assessment payer in the district not later than the first Monday in August a notice of the amount to be paid by such assessment payer for all purposes, and the books and records of the district showing all assessments and the amount charged against each person or tract of land shall be open at all reasonable hours to the inspection of every assessment payer of the district. [*Act approved March 4, 1907, § 68.*] (*10th Sess. Chap. 70.*)

2377. *Equalization.*—The directors shall sit as a board of equalization on the first Monday in September at some convenient place in the district, due notice of such meeting to be given by publication in a newspaper published nearest the district for at least two weeks prior to said meeting. Said meeting may be adjourned from day to day or to other points in the district, *provided* due notice of such change of place be given in the published notice of the meeting. The board shall hear all parties in interest, who may appear and shall equalize all inequalities in assessments, according to the true value of the lands for irrigation irrespective of improvements. All decisions of the board to be subject to appeal in the district court, but such decisions to govern pending appeal. [*Act approved March 4, 1907, § 69.*] (*10th Sess. Chap. 70.*)

2378. *Assessment for a sinking fund.*—After the lapse of five years after the issuance of any bonds of a district the directors shall levy an annual assessment against the lands on which such bonds were issued equal to one and one half per cent of all bonds outstanding, and after the first ten years of the life of any series of bonds an annual assessment shall be levied against said lands, of three per cent of all bonds outstanding against such lands, the funds collected by said assessments to be put into a sinking fund to redeem said bonds. [*Act approved March 4, 1907, § 70.*] (*10th Sess. Chap. 70.*)

2379. *Investment of sinking fund.*—The board of directors shall from time to time invest the funds of said sinking fund in interest bearing securities, *provided, however*, that before any such investment is made the board shall secure an order from the district court authorizing the same. [*Act approved March 4, 1907, § 71.*] (*10th Sess. Chap. 70.*)

2380. *Funds for the payment of separate series of bonds must be kept separate.*—Where more than one series of bonds have been issued by a district, the funds for the payment of each series shall be kept separate and distinct and all assessments to pay interest

or principal of any issue of bonds shall be made against the particular lands against which said bonds were issued. [*Act approved March 4, 1907, § 72.*] (*10th Sess. Chap. 70.*)

2381. *Redemption of bonds.*—Whenever the time arrives when any district has the privilege of redeeming any issue of bonds, that is to say, twenty years after the issue of said bonds, the securities in the sinking fund provided to redeem said bonds shall be sold for cash as readily as may be without sacrifice and said bonds shall be redeemed as rapidly as the accumulations in said sinking fund will permit. [*Act approved March 4, 1907, § 73.*] (*10th Sess. Chap. 70.*)

2382. *County treasurer custodian of district funds.*—The County Treasurer of the county wherein any district is organized shall be the custodian of all funds belonging to the district and he shall pay out such funds upon the written order of the board of directors, except as to payments on bonds, for which no order shall be necessary. Such orders shall be signed by the president and secretary of the board and shall bear the official seal of the district. Where such orders are for the payment of money for construction work the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work. [*Act approved March 4, 1907, § 74.*] (*10th Sess. Chap. 70.*)

2383. *Directors must furnish county treasurer the details of assessment.*—On or before the fourth Monday in September of each year the board of directors shall furnish the County Treasurer in each county in which any of the lands of the district are situate, a correct list of all the district lands in such county, together with the amount of the total assessments against said lands for district purposes and the Treasurer of each county shall collect such assessments at the same time and in the same manner as county and state taxes. [*Act approved March 4, 1907, § 75.*] (*10th Sess. Chap. 70.*)

2384. *Assessment of lands lying in more than one county.*—Where the lands of any district lie in more than one county the assessments collected in counties containing less than a majority of the lands shall be transmitted on or before the first day of January of each year by the County Treasurer of such county to the County Treasurer of the county containing a majority of the lands. The same being the county wherein said district has its organization. [*Act approved March 4, 1907, § 76.*] (*10th Sess. Chap. 70.*)

2385. *Sales for delinquent taxes.*—Delinquent sales of land for unpaid assessments shall be made in the same manner as for state and county taxes in the respective counties where such lands are situate, and the right of redemption shall in all cases be the

same as in cases where lands are sold for state or county taxes. [*Act approved March 4, 1907, § 77.*] (*10th Sess. Chap. 70.*)

2386. *Distribution of funds; liability of treasurer.*—The County Treasurer to whom district funds or securities are intrusted shall be liable on his bond for the safe keeping of said funds and securities, and such funds shall be properly divided into the respective funds for which assessments were levied, that is to say, Bond interest fund; sinking fund to redeem bonds; maintenance fund; construction fund and general fund. All warrants issued for preliminary expenses and all administrative and organization expenses shall be paid from the general fund. All money received from the sale of bonds shall be placed in the construction fund, and the first cost of constructing works of irrigation in the district including cost of engineering and superintendence shall be paid from said fund. All other expenditures shall be made from the respective funds to which such expenditures belong. [*Act approved March 4, 1907, § 78.*] (*10th Sess. Chap. 70.*)

2387. *Bonds to complete or improve irrigation works; election.*—Whenever in the judgment of the board of directors money is needed to complete or improve any irrigation works in the district, the board may call an election upon the question of issuing additional bonds or upon the question of raising money by a special assessment of the district, but only one of these questions shall be submitted at the same election. Such election shall be conducted in all manner as provided in this act for the holding of elections upon the question of issuing bonds and shall be determined and declared in the same manner. If at any election an issue of bonds shall be authorized, said bonds shall be subject to all the provisions contained in this act. [*Act approved March 4, 1907, § 79.*] (*10th Sess. Chap. 70.*)

2388. *Special assessments.*—If a special assessment shall be voted in any district it shall be added to and collected with the regular assessment of the district, and after any special assessment has been voted and before the collection of the same, the board of directors are hereby authorized and empowered to issue warrants to the amount of eighty per cent of the total special assessment so authorized said warrants to bear six per cent interest and to be payable out of the funds of such special assessment when collected. [*Act approved March 4, 1907, § 80.*] (*10th Sess. Chap. 70.*)

2389. *Sales of lands subject to lien.*—Where any lands in any district are sold or transferred either by mortgage foreclosure, sale or otherwise, such sale or transfer shall include the water belonging to and appurtenant to the land, whether or not the same is expressly stated in the deed, instrument of transfer or decree,

and such land shall be liable for all assessments of the district as if such sale or transfer had not been made. [*Act approved March 4, 1907, § 81.*] (*10th Sess. Chap. 70.*)

2390. *Method of valuation.*—In determining the proper and just assessment to be levied against any land for district purposes, the board of directors or the court shall hold the just measure of all assessments to be the actual increase in value of such land by reason of irrigation as compared to other lands in the district. [*Act approved March 4, 1907, § 82.*] (*10th Sess. Chap. 70.*)

2391. *Owners may pay cash upon completion of work.*—If any landowner in the district shall notify the directors in writing within ten days after election has been carried affirmatively to issue bonds for the construction of irrigation works, that he desires to pay cash for the proportionate share for which his lands are liable for such irrigation works as determined by the board of directors, and as soon as notified by the board of directors of the proper amount, shall deposit the same in cash with the County Treasurer in the county wherein said district is organized; then and in that event the board shall withhold from sale bonds equal to the amount paid in by such landowner and the board shall make an order omitting the levy against such land perpetually for bond fund and interest fund. Said order shall contain a correct description of the land involved and a copy of the same under the seal of the board shall be filed for record with the county clerk and recorder in the county wherein said land is situated. Such land, however, shall not be exempt from assessments of the district for other purposes. [*Act approved March 4, 1907, § 83.*] (*10th Sess. Chap. 70.*)

2392. *Actions to determine validity of assessment.*—Any district assessment payer may bring an action in the district court of the county where the office of the board of directors is located, to determine the validity of any assessment on any bonds. The board of directors shall be made parties defendant and service of summons shall be made on the president or any member of the board in the absence of the president. Said board shall have the right to appear and contest such action. Such action shall be speedily tried and judgment rendered declaring such matter so contested either valid or invalid. Either party may have the right to appeal to the supreme court at any time within thirty days after the rendition of such judgment, which appeal must be speedily heard and determined. [*Act approved March 4, 1907, § 84.*] (*10th Sess. Chap. 70.*)

2393. *Consolidation of actions.*—If more than one action shall be pending at the same time concerning similar contests in this act provided for, they shall be consolidated and tried together. [*Act approved March 4, 1907, § 85.*] (*10th Sess. Chap. 70.*)

2394. *Pleading and practice.*—The court hearing any of the contests herein provided for inquiring into the regularity, legality or correctness of such proceedings must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure which are not inconsistent with the provisions of this act are applicable to all actions or proceedings herein provided for. The motion for a new trial of any such action or proceedings must be heard and determined within ten days from the filing of notice of intention. The costs of any hearing or contest herein provided for may be allowed and apportioned between the parties or taxed to the losing parties in the discretion of the court. [Act approved March 4, 1907, § 86.] (10th Sess. Chap. 70.)

CHAPTER VI.

MISCELLANEOUS PROVISIONS.

Section 2395. *Penalties for violations.*

“ 2396. *Power of directors to sell or lease surplus water.*

“ 2397. *Price to be paid for surplus water.*

“ 2398. *Submission of question of price to District Court.*

“ 2399. *Transfer of moneys to the sinking fund.*

“ 2400. *Transfer of funds.*

“ 2401. *Lands belonging to state or United States not liable for assessments until patents issue.*

“ 2402. *Examination by state examiner.*

2395. *Penalties for violations.*—For any wilful violation of any express duty herein provided for on the part of any officer herein named he shall be liable upon his official bond and be subject to removal from office by proceedings brought by the district court of the county wherein the office of the board of directors of the district is located by any assessment payer of the district. [Act approved March 4, 1907, § 87.] (10th Sess. Chap. 70.)

2396. *Power of directors to sell or lease surplus water.*—The board of directors of any irrigation district shall have power to sell or lease to any other district any surplus water accepting therefor either cash or bonds of the district making the purchase or lease, *provided, however,* if the amount involved is more than ten thousand dollars the matter must be carried affirmatively at an election held in each of said districts, said election to be conducted in the same manner as otherwise provided in this act. [Act approved March 4, 1907, § 88.] (10th Sess. Chap. 70.)

2397. *Price to be paid for surplus water.*—The price to be paid by any one district to any other district for water shall be based on the cost of the works from which said water is to be taken and shall bear the same ratio to the total cost of said works above the point of diversion as the amount of water taken bears to the total amount of water carried in said works. [Act approved March 4, 1907, § 89.] (10th Sess. Chap. 70.)

2398. *Submission of question of price to District Court.*—In the event that any two districts are unable to agree upon a price to be paid for water furnished by one district to the other, the question or questions at issue may be tried in the district court having jurisdiction and such proceeding shall be determined as otherwise provided in this act. [Act approved March 4, 1907, § 90.] (10th Sess. Chap. 70.)

2399. *Transfer of moneys to the sinking fund.*—In the event of any money remaining in the construction fund after the completion of any district project, the same shall be transferred to the sinking fund for the redemption of bonds. [Act approved March 4, 1907, § 91.] (10th Sess. Chap. 70.)

2400. *Transfer of funds.*—The board of directors shall have power to transfer money from any one fund to any other fund, except that no money shall be drawn from the sinking fund or construction fund except as specifically provided in this act. [Act approved March 4, 1907, § 92.] (10th Sess. Chap. 70.)

2401. *Lands belonging to state or United States not liable for assessments until patents issue.*—Any lands belonging to the State of Montana, or to the United States may be included in any irrigation district, but such lands shall not be liable for the payment of any assessments for any purpose until after such lands shall come into private ownership as hereinafter provided. Where any such State or United States lands subject to irrigation in any district are under lease or occupied by settlers, such lessee or settler may be assessed for the following purposes, viz.: maintenance, administration and interest on bonds. All such assessments shall be a lien upon any crops or products grown on such lands. Such assessments shall be collected in the same manner as state or county taxes on personal property. In the event that any such state or government land in any district is sold to any person, corporation or company such land shall immediately become liable for all assessments in the same manner as other lands in the district and the water apportioned to said land by the directors shall be appurtenant to the land and inseparable therefrom. [Act approved March 4, 1907, § 93.] (10th Sess. Chap. 70.)

2402. *Examination by state examiner.*—All books, accounts, records, contracts, securities and business of every kind pertain-

ing or belonging to any district shall be subject to examination by the State Examiner and it is hereby made his duty to examine the same as provided by law for the examination of County offices. [*Act approved March 4, 1907, § 94.*] (10th Sess. Chap. 70.)

TITLE XI.

DRAIN DISTRICTS.

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CHAPTER I.

DRAIN COMMISSIONERS.

Section 2403. Location and establishment of drains.

“ 2404. *Definition of term.*

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2403. *Location and establishment of drains.*—That drains may be located, established, constructed and maintained, and drains and water courses may be cleaned out, straightened, widened, deepened and extended, whenever the same shall be conducive to the improvement or reclamation of agricultural lands, public health, convenience or welfare. [*Act approved March 7, 1905, Art. I, § 1.*] (9th Sess. Chap. 106.)

2404. *Definition of term.*—The word “drain” whenever used in this Act shall be deemed to include any water course or ditch, opened or proposed to be opened and improved for the purpose of drainage, and any artificial ditch or drain, levee, dyke or barrier, or tile drain proposed or constructed for such purpose. [*Act approved March 7, 1905, Art. I, § 2.*] (9th Sess. Chap. 106.)

2405. *Appointment of drain commissioner.*—The Board of County Commissioners of each organized County in this State, which may desire to avail itself of the benefits of this Act, shall,

at its regular meeting in March, Nineteen Hundred and Five appoint one drain commissioner, whose term of office shall end on the first day of January, Nineteen Hundred and Seven. Such Board of County Commissioners shall, at their regular meeting in September, Nineteen Hundred and Six, and every second year thereafter appoint one drain commissioner whose term of office shall be two years, and shall begin on the first day of January following his appointment. In case of vacancy in the office of the county drain commissioner the same may be filled by appointment by the board of county commissioners at any regular or special meeting and of which election they shall file the certificate with the county clerk, and the person so appointed shall hold his office until his successor is appointed. Every county drain commissioner shall within ten days after his appointment take, subscribe and file with the county clerk the oath of office required by the Constitution of this State and shall also within the same time execute and file with such clerk a bond to the county in the penal sum of ten thousand dollars with two or more sufficient sureties to be approved by the board of county commissioners, conditioned upon the faithful discharge of the duties of his office. It shall be the duty of the county clerk, upon the appointment of any county drain commissioner to make report thereof to the Secretary of State, giving also the date he qualified and entered upon the discharge of his duties. [*Act approved March 7, 1905, Art. I, § 3.*] (*9th Sess. Chap. 106.*)

2406. *Jurisdiction of drain commissioner.*—The county drain commissioner shall have jurisdiction over all drains within his county including those heretofore established and now in process of construction, except that in all cases where the entire drain shall be laid in one county, and the benefits to be derived therefrom and the assessments for its construction shall extend to lands situated in one or more adjoining counties, then all such drains shall be laid by the commissioners of such counties acting jointly, and all their proceedings shall be had under the provisions of this act regulating the construction of drains traversing more than one county. [*Act approved March 7, 1905, Art. I, § 4.*] (*9th Sess. Chap. 106.*)

2407. *Drains in incorporated cities.*—In case it is proposed to run a part or parts of a drain through any incorporated city or town, all of such drains shall be located, established and constructed and the assessment for its construction made by the county drain commissioner in the same manner as herein provided for the construction of other drains: and whenever the word "county" is used in this act it shall be construed to mean city or village, as the case may be. Whenever such part or parts of said drain shall be located within any street, highway or public place, of any town or city, then a resolution adopted by a majority vote

of the common council of said town or city granting leave to construct such drain therein, and designating the name of the street or pointing out the alley or other public place to be traversed by such drain, shall be sufficient release of the right of way, and shall be deemed a sufficient conveyance under the provisions of this act, and said common council may permit the construction of an open drain if such consent be expressly set forth in such resolution: *Provided*, That when an appeal is taken from the assessment of such county drain commissioner by the owner of the lands in a city or town such appeal shall be made to the common council of such city or town, subject in every other respect to the provisions of this act covering appeals. [*Act approved March 7, 1905, Art. I, § 5.*] (9th Sess. Chap. 106.)

2408. *Duties of drain commissioner.*—It shall be the duty of each county drain commissioner to make and keep a full financial statement of each drain laid out by him. The county drain commissioner shall also make and keep in his office, in a book to be provided for that purpose, a complete record of each drain laid out or applied for under his supervision, under the provisions of this act, which record shall include a copy of the application for the laying out of the drain, of the minutes of the survey, or the releases of the right of way where the same has been released, together with the minutes of his doings, of his orders of determination of the necessity for, and of the establishing the drain, and his assessments of benefits. Where special commissioners or a jury have been called it shall also contain a copy of the application to the district court, of the return of the special commissioners or jury as the case may be, and of all other papers in his office necessary to show a complete history of each drain, all of which said original papers shall then be deposited and filed in the office of the county clerk. And no drain tax shall be spread until all the records required have been deposited and filed in the office of the county clerk. [*Act approved March 8, 1905, Art. I, § 6.*] (9th Sess. Chap. 106.)

2409. *Releases of rights of way.*—Drain commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this Act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land intended to be conveyed, and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. [*Act approved March 7, 1905, Art. I, § 7.*] (9th Sess. Chap. 106.)

2410. *Report of drain commissioner.*—Every county drain commissioner shall make a report to the board of county commissioners on the second day of its quarterly meetings, of all drains constructed, finished or begun under his supervision during the quarter then ending, and he shall also render to them a full financial statement of each drain. The reports required by this section shall include an itemized statement of all expenses and disbursements on account of each and every drain laid or operated by him during the year, and a debt and credit balance of every such drain. Each county drain commissioner shall be liable on his bond for any gross neglect of duty or any misapplication of moneys coming under his control as such drain commissioner. [Act approved March 7, 1905, Art. I, § 8.] (9th Sess. Chap. 106.)

2411. *Eligibility to office of drain commissioner.*—No person holding the office of county commissioner or county clerk shall be eligible to the office of county drain commissioner, and any county drain commissioner accepting the office of county commissioner or county clerk shall thereupon be considered as having vacated the office of county drain commissioner, but it is hereby provided that nothing in this act shall prevent the appointment of the County Surveyor to the office of County Drain Commissioner, nor of his holding both offices at the same time. [Act approved March 7, 1905, Art. I, § 9.] (8th Sess. Chap. 106.)

CHAPTER II.

LOCATION OF DRAIN.

- Section 2412. *Application for location of drain; who may apply.*
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“ 2431. *Construction of blind drains.*

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2412. Application for location of drain; who may apply.—

Before the commissioner takes any action towards locating or establishing any drain there shall be filed with him an application signed by no less than ten freeholders of the county or counties in which such drain or the lands to be drained thereby and to be assessed therefor may be situated; also that five or more of said signers shall be owners of lands liable to an assessment for benefits in the construction of such drain: *Provided*, that where there are only three or less property owners liable to assessments for benefits one or more of such owners of lands so liable shall be necessary upon such application, giving a general description of the beginning, the route and the terminus thereof. And in case any county drain commissioner shall directly or indirectly interest himself in securing signatures to an application for any drain he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed fifty dollars or by imprisonment in the county jail not to exceed ninety days or by both such fine and imprisonment in the discretion of the court, and the office of such drain commissioner shall be deemed vacant, and the drain commissioner so convicted shall be incapable of again holding the office of county drain commissioner. Such applicants shall be jointly liable for all costs and expenses in case the county drain commissioner upon examination or upon examination and survey shall determine that the same is unnecessary or impracticable or in case the proceedings shall be dismissed for other cause. If the persons signing such application shall refuse to pay such costs and expenses the county drain commissioner shall bring suit in a court of competent jurisdiction and collect such costs and expenses with costs of suit. If upon the presentation of such application the county drain commissioner shall deem the financial responsibility of the applicants insufficient he shall have the right to return such application for additional signatures. [*Act approved March 7, 1905, Art. II, § 2.*] (*9th Sess. Chap. 106.*)

*2413. Proceedings upon application.—*Upon the filing of such application the county drain commissioner authorized to act thereon shall as soon as practicable thereafter proceed to per-

sonally examine the route of the proposed drain and if in his opinion it is necessary and conducive to the improvement or reclamation of agricultural lands, public health, convenience or welfare, that the application should be granted, he shall, as a means of determining the practicability thereof, make a survey and measurement of the line of the proposed drain, or cause the same to be made by a competent surveyor. If upon such survey he shall find such drain to be practicable, he shall within ninety days make his first order or determination in writing in accordance therewith, therein particularly naming such drain by which it shall thereafter be known and shall establish the commencement, route, and terminus of said drain, and the width, length and depth thereof, and shall set survey or grade stakes not more than eight rods apart. For such purpose he shall have the right to enter upon any such lands traversed by the route of the proposed drain, or otherwise connected, with the purpose of the proceeding. In locating such drain the county drain commissioner shall not be limited or confined to the precise starting point, route or terminus set forth in the application. The record or minutes of the survey shall show the line and route of the drain, the points where the line of the drain crosses the boundary lines of each owner's land and the length thereof upon his land, and the width of surface excavation that will be required in its construction and shall also show, by words, or letters and figures, the width of ground that will be required for the deposition of earth, and every release or right of way shall be deemed to include the extreme width thus shown. [Act approved March 7, 1905, Art. II, § 1.] (9th Sess. Chap. 106.)

2414. *Owners may construct drain.*—If at any time after the county drain commissioner has issued his first order of determination, establishing such drain as provided in the preceding Section, and before the letting of any contract for constructing the same, all the owners of the lands through which, or for the benefit of which such drain is located, shall, by themselves, their agents or attorneys, pay to the county drain commissioner all the costs and expenses thus far incurred by him, and shall severally or jointly enter into a contract, with good and sufficient sureties and in such sum as the county drain commissioner may require, to construct so much of such drain, and on such route, and of such dimensions as the said commissioner may, in such contract determine, and to pay all expenses necessary to be incurred in the construction of the same, then the county drain commissioner may so contract with such owner or owners, and such drain, when so finished and accepted shall be certified by the county drain commissioner as a drain lawfully constructed in pursuance of the provisions of this act, and shall be recorded in the same manner as other drains. If any such contracts are

not fulfilled by the time limited therein, the county drain commissioner shall contract with other parties for the completion of the work, and the parties so in default, and their sureties, shall be liable for all costs and expenses attending such default. [*Act approved March 7, 1905, Art. II. § 3.*] (9th Sess. Chap. 106.)

2415. *Application for assessment of damages for right of way.*—If within twenty days after the making of such order of determination, all the persons through whose lands the proposed drain is to pass shall not have executed a release of the right of way, and all damages on account thereof, the county drain commissioner shall, as soon as practicable, make application to the district court of the county in which such lands are situated, for the appointment of three disinterested special commissioners, who shall be resident freeholders of the county, but not of the district or districts traversed by such drain, to determine the necessity therefor, and for the taking of private property for the use and benefit of the public, for the purposes thereof, and the just compensation to be made therefor. Such application shall be in writing and shall set forth:

First, The fact that an application for a drain was made, and when, filing with said court a certified copy of such application, also giving the route, survey and specifications of said drain as set forth in the first order of determination;

Second, That an order determining the necessity for such drain was made by the county drain commissioner, giving the time when such order was made, in accordance with such route, survey and specifications as above set forth;

Third. (1) The several descriptions of tracts of land with the names of the owner or owners of every such tract who have refused or neglected to execute a release of right of way and damages in any way arising or incident to the opening or maintaining the said proposed drain: (2) The several descriptions or tracts of land owned by any minor, incompetent person, unknown persons or non-residents of the county or counties, the execution of a release of right of way and damages for which have been neglected or refused: (3) It shall not be necessary to set forth in said application to the district court the names of the several owners nor the descriptions of the several tracts or parcels of lands liable to an assessment for benefits, in case the drain applied for should be located and established, except those who have not released the right of way and through whose land the drain passes; nor shall the same be included in the citation issued from the district court. [*Act approved March 7, 1905, Art. II, § 4.*] (9th Sess. Chap. 106.)

2416. *Hearing of application.*—The court to whom such application is made shall make an examination at the time of such

application of all the proceedings of the county drain commissioner so far as had, and if such proceedings be found to be in accordance with the statute, such court shall at once appoint a time and place of hearing upon the application, which time shall be fixed not less than fifteen nor more than forty days thereafter and the court shall issue a citation to all persons whose lands are traversed by such drain, who have not released the right of way, and all damages on account thereof, to appear at the time and place designated in said citation, and be heard with respect to such application, if they so desire, and show cause, if any there be, why said application should not be granted, and any error or errors that may have been made in any of the proceedings thus far had shall be raised and taken advantage of at such time and before such court, and if not so raised and taken advantage of at such time and before such court shall be deemed to have been waived by all persons cited to appear under this notice. If any person on whom such service is to be made is a minor, under the age of fourteen years, or an incompetent person and resides in this State, such service shall be made as herein provided on his guardian, or if none, then on the person who may for such purpose be appointed special guardian and also on the person who has the care of, or with whom such minor or incompetent person resides. In case any person whose lands are traversed by said drain is a minor or an incompetent person, and has no guardian, the said court or the judge of said court, shall appoint a special guardian, to appear for and attend to the interests of such minor or incompetent person and all notices to be served in the progress of the proceedings shall be served on such special guardian. [*Act approved March 7, 1905, Art. II, § 5.*] (*9th Sess. Chap. 106.*)

2417. *Citation.*—The citation shall recite so much of the premises as will show jurisdiction, giving a description of the land traversed by such drain, and in the case of resident owners who reside upon the premises traversed by said drain shall be addressed to such owners by name; in the case of non-resident owner or owners not residing upon the lands traversed, it shall be addressed to the non-resident owner or owners but it shall not be necessary to name such owner or owners. It shall describe the drain by its commencement, terminus and general course, and shall set forth that land owned by the persons to whom it is addressed will be crossed by such drain and may be subject to assessment for its construction, and that a description and survey of such drain is on file with the court issuing such citation, and describe the land to be taken. Such citation shall be personally served by the county drain commissioner or some other competent person, upon every person whose lands are traversed

by the said drain, who has not released the right of way and all damages on account thereof, and who resides on any land to be traversed by said drain by delivering to him or her a copy thereof or by leaving the same at his or her residence with some person of suitable age and discretion, who shall be informed of its contents. In all cases of personal service at least ten days shall intervene between the day of service and the day of hearing, and the court issuing such citation shall require proof of such service by affidavit showing the time, place and manner of such service. Citations shall be served upon cities and incorporated towns by leaving a copy thereof with the mayor and street commissioner, if there be one; upon the State by leaving or mailing a copy thereof to the State Land Commissioner and the prosecuting attorney of the county in which such lands are situated; upon railroad companies by leaving a copy thereof with the agent of any ticket or freight office of the company operating such railroads, and upon other corporations by serving the same upon the officer or person designated by law in cases of serving civil process. If any lands involved are owned by non-residents of the county or counties, or by residents who do not reside upon the premises traversed by said drain, a copy of the citation so far as it affects such lands shall be published in some newspaper published and circulated in the county in which such lands are located for at least two weeks previous to the day of hearing, which publication shall be deemed to be sufficient notice to all such parties, and it shall not be necessary to name such owner or owners in said publication. The first publication of such notice shall be at least fourteen full days before the day of hearing, and proof of its publication shall be made as above provided in the case of personal service. [*Act approved March 7, 1905, Art. II, § 6.*] (*9th Sess. Chap. 106.*)

2418. *Proceedings at hearing.*—The court to whom such application is made shall at the time and place fixed in the citation, or at any time in which it may adjourn, and upon proof of service and publication when required, proceed to hear all persons whose lands are traversed by said proposed drain, and all such persons may show cause against the prayer set forth in the application, and may disprove any of the facts alleged therein, except the necessity of the drain, and may raise any and all objections to any errors or irregularities made in the proceedings had thus far, if any, and the said court shall hear the proofs and allegations of the parties, and the objections so made to the proceedings, if any there be, and if no sufficient cause is shown against granting the prayer set forth in said application, the said court shall make an order appointing three disinterested and competent resident freeholders of said county not residents of the district

traversed or benefitted by the drain, as special commissioners to ascertain and determine the damages or compensation to be allowed to the owners or parties interested in the real estate proposed to be taken for the right of way for such drain. Such court shall immediately upon the appointment of such commissioners, and with the concurrence of the county drain commissioner, appoint a time and place, such time to be not less than five nor more than fifteen days thereafter, at which time such special commissioners shall meet the county drain commissioner and other parties, who have not released the right of way, to consider the matters and things with respect to which they have been appointed, and the said court shall make public announcement thereof, and thereupon the proceedings shall be deemed a continuing proceeding, and no further notice of the time and place of hearing shall be required, and such appointment and announcement shall be made a part of the record in the case; *Provided*, That if it shall appear at such hearing that all parties have not been duly notified, the court may adjourn such hearing for a period sufficiently long to enable the county drain commissioner to duly notify such parties in the manner heretofore provided and it shall not be necessary to again notify the parties who have received legal notice in the first instance. The district court shall, if necessary, allow the county drain commissioner to amend his application at any time before the appointment of special commissioners and in case there is shown to be error in the proceedings of the county drain commissioner the district court shall adjourn the hearing for sufficient time to allow the said commissioner to correct such error or errors; *Provided*, That application to establish the drain is shown to be sufficient under the statute; *Provided, further*, That any person whose premises are traversed by the proposed drain may in writing demand and have from such court at the time of hearing of said application a jury of twelve freeholders of said county, not residents of the districts traversed by or benefitted by such drain, to ascertain and determine the necessity for taking or using such lands, and to appraise and determine the damages and compensation to be allowed therefor. The demand of any one of the parties who have not released the right of way, for a jury, shall be deemed to be a demand for all, and if no jury be demanded on the part of any person who has not released the right of way before the appointment of special commissioners shall be made by such court, his or her right to the same shall be deemed to have been waived. Whenever such demand for such jury shall have been made, the court shall proceed in the same manner as is provided by law in case commissioners are appointed in condemnation suits, and all further proceedings had in the matter by such court and jury shall be in conformity with the provisions of law, as afore-

said, so far as the same shall apply: *Provided*, That when such jury shall have made their report, and the same shall have been confirmed by such court, a certified copy of such order of confirmation shall be furnished by the court to the county drain commissioner. [Act approved March 7, 1905, Art. II, § 7.] (9th Sess. Chap. 106.)

2419. *Appointment of commissioners.*—If no demand for a jury shall be made, and the court shall have granted the prayer set forth in the application, such court shall proceed to deliver to the county drain commissioner a copy of the order appointing the special commissioners, and the county drain commissioner shall notify such special commissioners of their appointment and the time and place they are required to meet with him and the other parties, who have not released the right of way for said proposed drain. In case such special commissioners neglect or refuse to meet at such time and place with said county drain commissioner, the said county drain commissioner shall adjourn such day of meeting for a period not to exceed thirty days, and he shall give public notice by proclamation of the date, time and place of such adjourned meeting, and he shall, as soon as practicable, make application to the judge of the district court who shall appoint other special commissioners without further notice or citations. They shall be sworn to faithfully discharge the duties of special commissioners in the matter in which they are called to act, and to well and truly determine the necessity for such drain, and the taking of private property for the use and benefit of the public for the purpose thereof and the just compensation to be paid therefor. The said special commissioners, with the county drain commissioner and the other parties in interest who may be present, who have not released the right of way for said proposed drain, shall meet at the time and place ordered by said court and proceed at that time, or at any time to which they may adjourn, to view such premises, and for such purpose they shall have the right to enter upon any lands traversed by the route of the proposed drain. [Act approved March 7, 1905, Art. II, § 8.] (9th Sess. Chap. 106.)

2420. *Duties of Commissioners.*—The said jury or special commissioners shall hear the proofs and allegations of the several parties in interest, and shall ascertain and determine the necessity for such drain, and for the taking of such private property for the use and benefit of the public the purpose thereof, and the just compensation to be made therefor in each case, which compensation shall be determined without reference to any benefits that may accrue to the land in consequence of the construction of such proposed drain. There shall be produced by the county drain commissioner at such hearing, the original application for

the laying out of such drain, and the minutes of his action thereon, so far as had, also the first order of determination and application to the district court, with the citation annexed and a copy of all proceedings in the district court, the original minutes of the survey, signed by the surveyor and the order appointing the jury or special commissioners as the case may be. The jury or special commissioners may adjourn such hearing from day to day, for any cause, not exceeding in all ten days, announcement of which adjournment shall be then and there publicly made. [*Act approved March 7, 1905, Art. II, § 9.*] (9th Sess. Chap. 106.)

2421. *Return of Commissioners.*—The said jury or special commissioners shall within fifteen days from the date of their first meeting make a return in writing of their hearing, determination and of their several awards. The special commissioners shall file said return with the county drain commissioner who shall examine the same, and if he shall find such return not to be in substantial conformity with the statute, he shall return the same to the special commissioners for correction, with his objections in writing. The special commissioners shall thereupon proceed to correct their return, and file the same with the county drain commissioner within five days. When the county drain commissioner shall find such return to be without material error, he shall file the same with the other papers in his possession pertaining to such drain. In case of a jury they shall file and return to the judge of the district court who shall examine the same, and if he shall find such return not to be in substantial conformity with the statute, he shall return the same to the jury for correction, with his objections in writing. The jury shall thereupon proceed to correct their return, and file the same with the court within five days, and when such shall have been confirmed by such court, a certified copy of such order of confirmation shall be furnished by the court to the county drain commissioner. Such return by such jury or special commissioners shall be deemed sufficient conveyance to vest the fee of the lands necessary to be taken for such drain and upon which damages are awarded in the county in which they are situated, in trust to and for the uses and purposes of drainage, and for no other use or purpose whatever; *Provided*, that the amount of compensation that they have been awarded therefor shall have been paid or deposited in court for the person or persons entitled thereto; and *provided further*, that final order of condemnation be made and entered in the case. [*Act approved March 7, 1907.*] (10th Sess. Chap. 155.)

2422. *When drain unnecessary proceedings to be dismissed.*—In case the special commissioners of jury shall decide such drain to be unnecessary they shall so state in their return, and

the county drain commissioners shall thereupon dismiss the proceedings at the cost of the applicants, and no further application for the same shall be entertained within one year thereafter. *Act approved March 7, 1905, Art. II, § 11.* (9th Sess. Chap. 106.)

2423. *Release for right of way.*—If at any time before the appointment of special commissioners or jury provided for in this act or at any time before the filing of their return and award of damages, all of the parties through whose lands the proposed drain is to pass shall execute a release for right of way, and all damages on account thereof, then all proceedings for the appointment of special commissioners or jury and all actions taken by them after their appointment, shall be discontinued and void, and the county drain commissioner shall proceed as if no application for special commissioner or jury had been made. [*Act approved March 7, 1905, Art. II, § 12.*] (9th Sess. Chap. 106.)

2424. *Payment of assessment for damages.*—The county drain commissioner shall deduct the award of damages from the assessment of benefits, when made, on the tract which includes the right of way of said drain. In case the award of damages shall exceed the assessment of benefits, the county commissioners shall draw orders on the county treasurer, for the amounts awarded in the return of the special commissioners or jury in excess of assessments for benefits, describing in each order the lands in payment whereof it is drawn, and before such drain shall be constructed such order shall be tendered by the county drain commissioner to the party entitled thereto: *Provided*, That if the owner of any lands upon which damages have been awarded in excess of apportionment of benefits be a non-resident of the district or districts traversed by said drain, or be unknown, or in case of a minor or otherwise incompetent person, such order shall be deposited with the county clerk, payable to the owner of such description of land upon which such damages were awarded. Such order shall be held by such clerk and be delivered by him to the owner of such lands when called for or otherwise legally demanded, and the same shall thereby be deemed to have been lawfully tendered to the owner of such lands. It shall be the duty of such county treasurer at any time upon presentation to him of any such drain order drawn for the payment of such right of way or damages to pay the same out of any moneys in his hands belonging to the general fund of such county and refund such amount out of the first moneys collected by him on account of such drain. [*Act approved March 7, 1905, Art. II, § 13.*] (9th Sess. Chap. 106.)

2425. *Tender of payment.*—If the owner of any lands upon which such damages have been awarded in excess of apportionment for benefits shall, upon the tender of such order to him,

refuse to accept the same, the county drain commissioner shall make such tender in lawful money, and for that purpose he shall be authorized to endorse such order and present the same to the county treasurer for payment, and it shall be the duty of such treasurer to pay such order as hereinbefore provided. If, however, there shall be no money in the general fund of such county treasury, the county drain commissioner shall be authorized to have such order discounted, wherever he may be enabled to do so: *Provided*, Such discount shall not be more than at the rate of eight per cent. per annum, and he shall charge the amount of such discount to the expense and cost of such drain, and the county commissioners shall draw an order therefor. The county drain commissioner shall thereupon make to such owner a tender in lawful money of the amount awarded to him in excess of the apportionment of benefits, and if he shall refuse to accept such money, the county drain commissioner shall deposit the same with the county treasurer, taking duplicate receipts therefor, one of which he may retain, and the other he shall file with the county clerk. Such money shall be held by such treasurer and be delivered by him to such owner when called for or otherwise legally demanded. [Act approved March 7, 1905, Art. II, § 14.] (9th Sess. Chap. 106.)

2426. *Construction of drain along railroad right of way.*—Drains may be laid along the line of any railroad within its right of way: *Provided*, Such drain shall not be to the injury of the roadbed. Whenever it is proposed to construct a drain along the line, and within the right of way of any railroad, and the company owning or operating such road shall refuse or neglect to permit such drain to be constructed or release the right of way therefor within the time prescribed in this act such release shall be obtained in the same manner as is provided in this act for obtaining private lands: *Provided*, That no drain shall be constructed along the line of any railroad without the consent of the company owning or operating such road, if it shall appear to the special commissioners or jury that such drain can be equally well laid on private lands. [Act approved March 7, 1905, Art. II, § 15.] (9th Sess. Chap. 106.)

2427. *Construction of drain across railroad right of way.*—Whenever it is necessary to run a drain across the right of way or road bed of any railroad, the same proceedings shall be had throughout in all respects as in cases provided in this act for obtaining private lands for the construction of drains, except as hereinafter provided. It shall be the duty of the railroad company when notified by the county drain commissioner so to do, to make and maintain the necessary opening through said road bed, and to build and maintain a suitable culvert. Notice in writing to make such opening, and to construct such culvert, shall

be served upon such company by leaving a copy thereof with the ticket or freight agent or general officer of such railroad company, at least thirty days before such railroad company shall become liable. [*Act approved March 7, 1905, Art. II, § 16.*] (*9th Sess. Chap. 106.*)

2428. *Refusal of railroad company to construct culvert.*—In case such railroad company shall refuse or neglect to comply with the provisions of the preceding section, it shall be liable to a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The county attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of the preceding section shall, upon complaint being made by the county drain commissioner, bring suit to collect such penalty or fines, and it shall be his duty to prosecute the same to a final determination in any court having competent jurisdiction. [*Act approved March 7, 1905, Art. II, § 17.*] (*9th Sess. Chap. 106.*)

2429. *Construction of drain along highway.*—Drains may be laid along and within the limits of or across any public highway: *Provided*, That when it is proposed to construct a drain in whole or in part along a public highway, the owners of the land abutting on the side of the highway along which such drain is proposed to be laid, shall be considered as still owning the fee of such land, and it shall be necessary for the county drain commissioner to obtain from them severally a release of their rights to so much of said highway as is necessary and proposed to be taken for the right of way of said drain, and for all damages on account thereof. In case such release is not executed within the time prescribed in this act, such release shall be obtained in the same manner as is provided in this act for obtaining private lands. [*Act approved March 7, 1905, Art. II, § 18.*] (*9th Sess. Chap. 106.*)

2430. *Construction of drain across highway.*—When any drain crosses a highway, the cost of constructing the necessary bridge or culvert shall be charged in first instance as part of the cost of construction of such drain, after which such bridge or culvert shall be maintained as part of the highway. When a drain passes along a highway, there shall be constructed at least one bridge or passageway across such drain connecting the highway with each enclosed field and with each farm house entrance, which bridge or passageway shall be charged in the first instance as a part of the construction of such drain, after which such bridge or passageway shall be maintained by the owner of the land. [*Act approved March 7, 1905, Art. II, § 19.*] (*9th Sess. Chap. 106.*)

2431. *Construction of blind drains.*—The county commissioner may order the construction of blind drains by the use of

drain tiles or sewer pipe, when the nature of the ground will admit thereof. When any such blind drain is to be constructed across any land, so that the surface of the land can be restored, the special commissioners in making their award of damages shall take that fact in account. Any person through whose land an open drain has been constructed, may make a written request to the county drain commissioner to be permitted to tile and cover with the earth the whole, or any part thereof, that may traverse his land, and the county drain commissioner may grant such request, but in doing so he shall prescribe the size of the tile to be used. When blind drains are constructed the entrance thereto shall be substantially protected from drift wood and debris. [*Act approved March 7, 1905, Art. II, § 20.*] (9th Sess. Chap. 106.)

2432. *Drains may be laid into lakes or other bodies of water.*
—Drains may be laid or extended into or along or from any lake or other body of water surrounded wholly or in part by a swamp, marsh or other low lands for the general purpose of drainage contemplated by this act but not so as to impair the navigation of any navigable water. [*Act approved March 7, 1905, Art. II, § 21.*] (9th Sess. Chap. 106.)

CHAPTER III.

CONSTRUCTION OF DRAINS.

Section 2433. Order for construction. Contracts.

“ 2434. *Determination of whether assessment of taxes shall be made in installments.*

“ 2435. *Awarding contracts.*

“ 2436. *Power of commissioner with reference to performance of contract.*

2433. *Order for construction. Contracts.*—Upon the release of right of way and damages or upon the determination and return of the special commissioners, or order of the district court, as the case may be, the county drain commissioner shall make his final order of determination, establishing the drain, a certified copy of which order or determination shall be filed with the county clerk within five days after such order is made. He shall include in such order a description of the several tracts or parcels of land to be assessed for benefits in the construction of such drain, which said tracts or parcels shall constitute the special assessment district for that purpose, to be known and designated in such order by the same name as the drain. He shall thereupon, without delay, proceed to divide the route thereof into convenient sections for the letting of the work, and shall mark the depth of cutting on each gradestake, from stake to stake, along the whole length of such drain. He shall also mark on

each section stake the number of each section of division from the lower end of said drain, and the length in feet or rods which each section contains and shall make a diagram corresponding with the divisions so made, and shall file the same with the other papers in his office pertaining to said drain. He shall give not less than ten days notice of the time and place of letting contracts by serving personal notice on every person whose lands are affected by such assessment and who resides in the district traversed or benefitted by said drain, which notice shall be served in the same manner as provided in this act for the personal service of citations, and by posting said notice, in five public places in the district traversed or benefitted by said drain, and by causing a notice thereof to be published, not less than two insertions, in one or more weekly newspapers published and of general circulation in the county. Such notice shall contain a description of the several tracts or parcels of lands constituting the special assessment district of such drain, as above provided, and it shall also state that at the time and place of such letting or at such other time and place thereafter to which the county drain commissioner may adjourn the same, the assessments for benefits and the lands comprised within the special assessment district shall be subject to review for at least one day; such review shall be held open from nine o'clock in the forenoon until five o'clock in the afternoon. At such review the county drain commissioner shall hear the proofs and allegations of all parties in interest, and shall carefully reconsider and review the descriptions of land within the special assessment district the several descriptions assessed and his assessments of benefits, and define and equalize the same as may seem just and equitable. [*Act approved March 7, 1905, Art. III, § 1.*] (9th Sess. Chap. 106.)

2434. *Determination of whether assessment of taxes shall be made in installments.*—At the time and place of letting contracts and before receiving any bids, the county drain commissioner shall have the right, and it shall be his duty to determine whether the whole of the per cent of taxes to be spread for benefits to lands in the construction of such drain shall be assessed and collected in that same year, or whether the same shall be divided into two or more equal installments, one installment to be collected in that same year, and the other installment or installments within five years next following. Such determination, however, shall be made then and there, and shall be publicly announced for the information of bidders; and the county drain commissioner shall also then and there announce for the information of bidders the per cent of tax to be assessed against any district at large and whether in his opinion it will be necessary to divide the amount thereof into installments as

hereinafter directed. [*Act approved March 7, 1905, Art. III, § 2.*] (*9th Sess. Chap. 106.*)

2435. *Awarding contracts.*—The county drain commissioner shall thereupon proceed to receive bids and let contracts for the construction of the sections, and make contracts with the lowest responsible bidder giving adequate security for the performance of the work. Such security shall cover the completion of the job in the manner and within the time fixed in the contract, and shall be in a sum to be fixed and determined by the county drain commissioner. He shall first let the section at the outlet of the drain, and shall let each remaining section in its order up stream. The county drain commissioner shall reserve the right to reject any and all bids, and may adjourn such letting in the whole or in part, from time to time to such other time or place, to be by him at the time of such adjournment publicly announced, as shall to him seem proper, but not in all more than forty days from and after the time of letting first advertised. The parties who are assessed a tax for benefits in the construction of such drain, and who may be bidders for the contracts thereon, shall, if equal bidders with other parties, be preferred in awarding such contracts. And it shall be the duty of the said drain commissioner after completion of said drain, to examine the same. If the county drain commissioner is satisfied with the manner in which said work is done he shall certify in writing that the drain is completed in accordance with the original grade and specifications, which certificate shall be filed with the county clerk and become a part of the records of said drain. It shall not be lawful for the county commissioners to issue orders on the fund of any drain exceeding two-thirds of the amount earned on any contract, until after acceptance of said work by the county drain commissioner, and the said certificate of the drain commissioner is filed. In case of any open drain the dirt excavated therefrom shall be placed as near as may be equal on each side and not less than three feet from the edges of said drain and shall not be left in piles more than four feet high except where the drain runs along a highway. *Provided*, that the owner of said lands may by written consent allow the dirt taken from said drain to be otherwise disposed of. [*Act approved March 7, 1905, Art. III, § 3.*] (*9th Sess. Chap. 106.*)

2436. *Power of commissioner with reference to performance of contract.*—The commissioner shall have the power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified or to which it may be extended, the county drain commissioner shall declare such contract forfeited, and shall within a reasonable time thereafter, relet the unfinished portion thereof to the

lowest responsible bidder, by public letting after not less than five days, notice thereof, by posting only, as provided for the letting in the first instance, or by private letting when such can be done at a price per rod for the uncompleted portion thereof not exceeding the price per rod at which the job was first let; and he shall make contract and take security in each case as hereinbefore provided. The cost of completing such part over and above the contract price, if any, and the expense of notice and reletting shall be collected by the county drain commissioner of the parties first contracting or of their bondsman, which moneys, when so collected, shall be deposited with the county treasurer, and placed to the credit of such drain: *Provided, That in no case shall the county drain commissioner declare any such contract forfeited without first giving five days' notice thereof to the contractor, if he can be found, and if not found then by a written notice left at his last place of residence, with some person of suitable age and discretion, who shall be informed of its contents; if such contractor have a known residence within the county.* [Act approved March 7, 1905, Art. III, § 4.] (9th Sess. Chap. 106.)

CHAPTER IV.

ASSESSMENT OF BENEFITS.

Section 2437. Commissioner shall apportion and assess benefits.

- " 2438. *Appeal from assessment.*
- " 2439. *Appointment of board of review.*
- " 2440. *Powers of boards of review.*
- " 2441. *Costs.*
- " 2442. *Basis of assessments.*
- " 2443. *Assessment of school and state lands.*
- " 2444. *Right to make additional assessments.*
- " 2445. *Refusal of persons appointed to act as boards of review.*

2437. *Commissioner shall apportion and assess benefits.*—The county drain commissioner shall apportion the per cent of the cost of construction of any drain which any township traversed or benefitted thereby shall be liable to pay by reason of the benefit to agricultural land and the public health, convenience or welfare, or as the means of improving any highway, and he shall also apportion the per cent of benefits to accrue to any piece or parcel of land by reason of the construction of such drain, over and above the per cent assessed against such district as aforesaid, which per cent of benefits shall be apportioned upon and assessed against the lands benefitted according to such assessment of benefits and which apportionments he shall an-

nounce at the time and place of letting, as provided in chapter four. Such assessment of per cent for benefits shall thereupon be subject to review and correction, and may be appealed from in the manner hereinafter provided. [*Act approved March 7, 1905, Art. IV, § 1.*] (*9th Sess. Chap. 106.*)

2438. *Appeal from assessment.*—The owner of any land assessed a per cent for any benefit for the construction of any drain, who may conceive himself aggrieved by the assessment made by the county drain commissioner, may, within ten days after the day of review provided for in the preceding section, appeal therefrom and for such purpose make an application to the district court of the proper county for the appointment of a board of review as hereinafter provided, by serving upon the drain commissioner and by filing with said district court a notice to that effect, and by filing also a bond with such court in the sum of two hundred dollars with one or more sureties to be approved by the judge of said district court, conditioned upon the payment of all costs in case the assessment made by the county drain commissioner shall be sustained. Any county or counties assessed a per cent for benefits for the construction of any drain that may conceive itself or themselves aggrieved by the assessment made by the county drain commissioner, may, within ten days after the date of review provided for in the preceding section, appeal therefrom as herein provided. Only one application for a board of review shall be entertained by such district court for any one drain. [*Act approved March 7, 1905, Art. IV, § 2.*] (*9th Sess. Chap. 106.*)

2439. *Appointment of board of review.*—The district court upon receipt of any such application, as hereinbefore provided for, shall forthwith notify the county drain commissioner in writing of such appeal and shall thereupon make an order appointing three disinterested and competent freeholders of such county, not residents of the district or districts affected by said drain, as members of a board of review. The persons so appointed, shall constitute the board of review. The court shall thereupon, with the concurrence of the county drain commissioner immediately fix a time and place when and where said board of review shall meet to review said assessments, which time shall not be less than ten nor more than fifteen days from the date of such appointment. The county drain commissioner shall thereupon give notice to the persons so appointed of their appointment, and of the time and place of meeting, and shall give notice of such meeting by posting notices in at least five public places in each district affected by such assessment, and shall serve a like notice upon the appellant if he be a resident of any district affected and upon the county attorney of the county in all cases where the State or county is an interested party. Such service shall be made not

less than five days before the day of hearing and may be made either by personal service or by causing a copy thereof to be left at their several places of residence. Proof of service of notice of such meeting shall be made by the person serving said notice and shall be filed in the office of the clerk of the district court. At such hearing the board of review shall have the right and it shall be its duty to review all assessments made by the county drain commissioner on such drain. The persons so appointed shall be sworn by the county drain commissioner to faithfully discharge the duties of such board of review: *Provided*, That the proceedings in establishing any drain shall be subject to review upon certiorari, as herein provided. Notice of such certiorari shall be served upon the county drain commissioner within ten days after the copy of the final order of determination of such commissioners in establishing any drain has been filed with the county clerk as provided herein in the same manner as notice is required to be given of certiorari for reviewing judgments rendered by justices of the peace, and the writ shall be issued and served, and bond given and approved and the subject matter brought to issue in the same time and manner, as near as may be, as in such cases provided, except that such certiorari may be heard by the court during term, or at chambers, upon five days' notice given to the opposite party; and the district court of the county shall hear and determine the same without unnecessary delay, and if any material defect be found in the proceedings for establishing the drain such proceedings shall be set aside. If the proceedings be sustained, the party bringing the certiorari shall be liable for the costs thereof, and if they be not sustained, the parties making application for the drain shall be liable for the costs. If no certiorari be brought within the time herein prescribed, the drain shall be deemed to have been legally established, and its legality shall not thereafter be questioned in any suit at law or equity: *Provided*, No court shall allow any certiorari questioning the legality of any drain by any person unless notice has been given to the county drain commissioner in accordance with the provisions of this section: *Provided further*, That when such proceedings are brought, the county drain commissioner shall postpone the letting of contracts and all other proceedings until after the determination of the court. And if any error be found in the proceedings, the court shall direct the county drain commissioner to correct such error or errors and then proceed the same as though no error had been made. [*Act approved March 7, 1905, Art. IV, § 3.*] (9th Sess. Chap. 106.)

2440. *Powers of boards of review.*—The board of review shall proceed at the time and place specified in the notice to hear the proofs and allegations of all the parties in respect to the matter of appeal and shall thereupon proceed to view the lands benefited

by such drain and review all the assessments made by the county drain commissioner on such drain, and if in its judgment there be manifest error or inequality in such assessments, it shall order and make such changes therein as it may deem just and equitable. Should the board of review find upon personal examination that there are lands liable to be assessed for the construction of said drain that are not included in the assessing district made by the drain commissioner, it shall add such lands to the assessing district of said drain and shall adjourn such review to such other time or place to be by it at the time of such adjournment, publicly announced, as shall to it seem proper, but not in all more than twenty days from and after the time of review first advertised and shall serve a notice on all such owners of lands lying in the district; such notice shall give the time and place of said review, also the description of lands added to said district and shall be served at least ten days before the adjourned day of review. Should such owners of land liable to an assessment be non-residents of said district there shall be a personal notice served on said owners as required above, or a notice shall be published in some weekly newspaper published in said county in at least two issues thereof giving the description or descriptions of lands added to said assessment district; also giving the time and place where said board of review shall meet. The action and decision of said board shall be final. The action and decision shall be reduced to writing and signed by a majority of the board making the same, and shall be delivered to the county drain commissioner together with all other papers relating thereto. [*Act approved March 7, 1905, Art. IV, § 4.*] (*9th Sess. Chap. 106.*)

2441. *Costs.*—In case the assessment of the county drain commissioner shall be sustained by such board of review, the appellant shall pay the whole costs and expenses of such appeal. Such cost and expenses shall be ascertained and determined by the judge of the district court, and if not paid the appellant shall be liable on his bond for the full amount of such costs in an action at law, to be brought by the county drain commissioner, on the bond, before any court having competent jurisdiction. [*Act approved March 7, 1905, Art. IV, § 4.*] (*9th Sess. Chap. 106.*)

2442. *Basis of assessments.*—All assessments of benefits under the provisions of this act shall be upon the principle of benefits derived. All descriptions of land under the provisions of this act shall be made by giving the legal subdivisions thereof, whenever practicable, and when the tract of land which is to be benefitted or affected by such drain is less than such legal subdivision it may be described by designation of the lot or other boundaries, or in some way by which it may be known. [*Act approved March 7, 1905, Art. IV, § 6.*] (*9th Sess. Chap. 106.*)

2443. *Assessment of school and state lands.*—School and state lands shall be assessed their per cent apportioned for benefits, and the collection thereof shall be enforced as State and county taxes against lands are collected and enforced. School and State lands shall be included in all assessments for benefits the same as other lands, but the sum of all such drain taxes that may be assessed against any tract of school or state lands shall not aggregate a sum greater than fifty per cent of the price at which said lands are held by the State. Any amount apportioned and assessed upon school or state lands shall be reported by the county commissioners to the Registrar of the State Land Office within ten days after the delivery of the assesment roll to the county treasurer. Said registrar of the State Land Office shall enter on the books of his office, against each description of such State lands, the amount of drain taxes assessed thereon, and shall certify the same to the Auditor who shall draw his warrant on the State Treasurer therefor, to be paid out of any funds in his hands not otherwise appropriated. Such amount shall be forwarded by the Registrar of the State Land Office to the County Commissioners on or before the fifteenth day of January next, and shall by him be applied in payment of such taxes. No deed shall issue for such lands until all such drain taxes are paid with interest at seven per cent. [*Act approved March 7, 1905, Art. IV, § 7.*] (9th Sess. Chap. 106.)

2444. *Right to make additional assessments.*—Whenever the amount assessed for the construction of any drain shall not be sufficient to complete the same, and to pay all the costs and incidental expenses, a further assessment shall be made to meet the deficit or additional expense. Such further assessment shall be apportioned, assessed, levied and collected as provided in the first instance, and on the same percentage, and shall be collected in one year, but there shall be no review of, nor appeal from such further assessment. [*Act approved March 7, 1905, Art. IV, § 8.*] (9th Sess. Chap. 106.)

2445. *Refusal of persons appointed to act as boards of review.*—Should any or all the persons so appointed as a board of review neglect or refuse to serve or be unable to act, the county drain commissioner shall adjourn the hearing for a sufficient length of time not exceeding in all ten days, to enable him to apply to the district court for the appointment of other persons to act on such board of review and shall make public announcement of the time and place of such adjournment. The review shall thereupon be deemed a continuous proceeding and no further notice shall be required. The district court shall, upon the showing being made, either that any or all the persons appointed as aforesaid have neglected, refused or were unable to act as the case may be and of the adjourned day of meeting, at once, by order appoint such other person or persons

of like qualifications as before to fill such vacancy. And the county drain commissioner shall notify the person or persons so appointed to fill such vacancy of his appointment and of the adjourned day of meeting. The person so appointed shall have the same power and perform the same duties as are herein provided for the board of review in the first instance. The persons acting as such board of review shall receive the sum of Three (\$3.00) Dollars per day for each day actually and necessarily spent in the discharge of their duties as members of such board of review. In case the assessment made by the county drain commissioner is sustained the district or districts appealing shall be severally liable for all costs incurred by such appeal, and the same proceedings shall be had throughout in all respect in said appeal to said district court, as to the benefits and liabilities in case of an appeal to the district court from an individual assessment: *Provided*, That in case two or more districts appeal from the same assessment, only one board of review shall be appointed to review the assessment against the several districts: *Provided further*, That the board of review herein provided for may adjourn any hearing before it from time to time, as justice may require, not exceeding in all twenty days from the date of their first meeting. [Act approved March 7, 1905, Art. IV, § 9.] (9th Sess. Chap. 106.)

CHAPTER V.

LEVY AND COLLECTION OF DRAIN TAXES.

- Section 2446. *Levy and assessment.*
 “ 2447. *Commissioners shall prepare special assessment roll.*
 “ 2448. *County clerk shall deliver assessment to county commissioners.*
 “ 2449. *County clerk shall put drain taxes on assessment roll.*
 “ 2450. *County clerk shall furnish treasurer itemized statement of drain taxes.*
 “ 2451. *Collection and penalties.*
 “ 2452. *Delinquent taxes.*
 “ 2453. *Orders for payment of contract.*
 “ 2454. *County treasurer to receive and disburse drain taxes.*
 “ 2455. *Injunction against collection of taxes prohibited.*
 “ 2456. *Curing defects in assessments.*
 “ 2457. *Same.*
 “ 2458. *Commissioners may reassess.*
 “ 2459. *County commissioners may correct assessment roll.*
 “ 2460. *Drain commissioner a party to actions.*

2446. *Levy and assessment.*—Within ten days after the letting of contracts, and in case of an appeal, then forthwith after such appeal shall have been decided, the county drain commissioner shall make a computation of the entire cost of such drain, which shall include all the expenses of locating, establishing and constructing the same, including the commissioner's fees, cost of survey, fees and expenses of special commissioners or jury, and the amount of contracts for construction, and interest on the costs, fees, expenses and charges for construction of said drain when the taxes assessed for the payment of same shall be paid in more than one year; also the cost of appeal in case the assessment of benefits made by the county drain commissioner shall not be sustained, and all other expenses, and he shall add the whole into a gross sum to cover contingent expenses, and the entire sum so ascertained shall be deemed to be the cost of construction of such drain. In case the drain and the assessment therefor shall affect more than one district or one or more districts and an incorporated city, the county drain commissioners shall apportion such sum between the several districts, city, town or county so affected upon the basis and per cent determined upon by him, or in case of an appeal, as provided herein. [Act approved March 5, 1907, Art. V, § 1.] (10th Sess. Chap. 102.)

2447. *Commissioners shall prepare special assessment roll.*—The county drain commissioner shall thereupon make a special assessment roll for such drain for each district or districts and city, affected thereby, which roll shall be designated "(giving the name) drain special assessment roll," and he shall enter therein a correct description of the tracts, parcels or subdivisions of land benefited by such drain, as provided herein and place opposite each description the amount of the per cent heretofore determined upon by him or by the board of review, as the case may be. He shall also enter thereon the amount of the per cent apportioned to such district or districts and any city or town, and in case such amount be payable in installments as provided in this act, he shall also enter thereon a memorandum of the installments thereof and of the year or years when such installments shall be spread; and shall add a certificate in writing of his determination made at the time and place of letting whether the taxes assessed for benefits shall be paid in one or more years. Such rolls shall be dated and signed by said drain commissioner and filed on or before the first day of August in each year, in the office of the clerk of the county or of any city or town in which such lands may be located. [Act approved March 7, 1905, Art. V., § 2.] (9th Sess. Chap. 106.)

2448. *County clerk shall deliver assessment to county commissioners.*—The county clerk shall, on or before the first day of September of each year, make and deliver to the county commission-

ers of his county a certified statement of the several amounts of drain taxes to be assessed upon such counties at large, for the ensuing year, and shall specify therein the several amounts to be raised for each particular drain, and also a certified statement of all the descriptions of land assessed for benefits for each drain, and the amount to be assessed upon each description for such years as determined by the county drain commissioner in his special assessment rolls. In case any portion of said drain is within the limits of any city the clerk thereof shall make and deliver to the city council of such city a certified statement of the several amounts of drain taxes to be assessed upon such city at large for the ensuing year, and shall make and deliver a similar statement of all the descriptions of land in said city assessed for benefits for each drain lying therein and the amount or amounts so assessed by the county drain commissioner in his special assessment rolls. [*Act approved March 7, 1905, Art. V, § 3.*] (*9th Sess. Chap. 106.*)

2449. *County clerk shall put drain taxes on assessment roll.*—It shall be the duty of the county clerk to spread on the assessment roll the total amount of all the drain taxes determined upon by the county drain commissioner to be assessed upon the county or city at large by adding to the county or city tax for the year in which the same was assessed and extending said tax in the same column with the general county or city tax. He shall also spread upon said roll, separately and immediately following the other descriptions, all tracts or parcels of land specified by the county drain commissioner to be assessed for benefits, and shall place opposite each description in a column marked "drain taxes," the amount of taxes apportioned thereon, as certified to him by the drain commissioner. [*Act approved March 7, 1905, Art. V, § 4.*] (*9th Sess. Chap. 106.*)

2450. *County clerk shall furnish treasurer itemized statement of drain taxes.*—The county clerk shall, at the time of the delivery of his assessment roll to the county treasurer, also furnish him with an itemized statement of the several amounts assessed upon the district or districts at large for each particular drain, naming the drain. He shall also, at the same time indorse upon every drain special assessment roll on file in the county clerk's office the amount of tax for benefits thereof spread by him on the tax roll of each district for that year on each description. [*Act approved March 7, 1905, Art. V, § 5.*] (*9th Sess. Chap. 106.*)

2451. *Collection and penalties.*—All drain taxes assessed under the provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as State and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for col-

lecting general taxes. In all cases where suit is brought against the county treasurer arising out of the collection of any drain tax, the county shall defend such officer in the same manner that he has now the right to be defended in the collection of general taxes. No suit shall be instituted to recover any drain tax or money paid or property sold therefor, or for damages on account thereof, unless brought within thirty days from the time of payment of such money to or sale of such property by, the collecting officer; and if such tax shall be paid under protest the reasons therefor shall be specified, and the same procedure observed as is or may be required by the general tax law. All taxes levied under the provisions of this act, with all lawful costs, interest and charges, shall be and remain a perpetual lien upon the lands upon which they are assessed, and a personal claim against the owner or owners of such lands until they are paid. [*Act approved March 7, 1905, Art. V, § 6.*] (9th Sess. Chap. 106.)

2452 *Delinquent taxes.*—If the taxes levied for the construction, cleaning out, widening, deepening or extending of any drain are not collected by the county treasurer, they shall by him be returned, together with the lands upon which they were levied, to the county commissioners in the same return, at the same time, and in the same manner, in every respect as lands are returned for State, county and city taxes, and such taxes shall follow such lands, the same as all such other taxes, and all the general provisions of law now existing or that may be hereafter enacted for enforcing the payment of city, county and state taxes, shall apply to such drain taxes, and to the lands returned delinquent therefor, in the same manner and with like effect. [*Act approved March 7, 1905, Art. V, § 7.*] (9th Sess. Chap. 106.)

2453. *Orders for payment of contract.*—All orders for the payment for services rendered and work performed shall be drawn by the county commissioners upon the drain fund of each particular drain. All orders for the payments for lands for right of way shall be paid on presentation out of the county treasury and for all other services rendered and expenses incurred, except contracts for construction, shall be paid out of the first year's taxes, and the balance of such first year's taxes, if any, shall be applied pro rata among the several contractors in the payment of the contracts for the construction of such drain. For the balance due upon such contracts the county commissioners shall draw orders payable out of the one or other succeeding year's assessment; *Providing*, that no orders shall be drawn payable in any one year for a larger amount than said year's assessment. All drain orders shall be drawn payable on the fifteenth day of December of the year in which the drain taxes for the payment thereof are required to be paid. All drain orders shall draw interest from the date made at the rate of six per cent. per annum.

Said interest shall be computed by the county treasurer and shall be paid with the principal of said orders out of the proper fund on which it is drawn, and out of no other fund, and said county treasurer shall report to the county commissioners the amount paid as interest on such orders. [*Act approved March 5, 1907, Art. V, § 8.*] (10th Sess. Chap. 102.)

2454. *County Treasurer to receive and disburse drain taxes.*—Drain taxes, when collected, shall be returned to the county treasurer to be disbursed by him. The drain orders issued for each particular drain shall be received for drain taxes for benefits levied for the construction of such drain, by the county treasurer. [*Act approved March 7, 1905, Art. V, § 9.*] (9th Sess. Chap. 106.)

2455. *Injunction against collection of taxes prohibited.*—After any taxes have been assessed for the construction, location or establishment of any drain, no injunction shall issue to restrain the collection thereof, nor shall the same be in any manner stayed, unless the amount of such assessment shall first be paid into the county treasurer to be applied upon such tax, in case the court in which the suit upon which such injunction is tried shall so order. [*Act approved March 7, 1905, Art. V, § 10.*] (9th Sess. Chap. 106.)

2456. *Curing defects in assessments.*—The collection of no tax levied or ordered to be levied for the payment of the location or construction of any drain laid out under this act shall be perpetually enjoined or declared absolutely void in consequence of any error or informality of any officer in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any drain shall have been located and established, nor on account of any irregularity or informality in the condemnation of right of way nor for want of any record thereof; but the court in which any action may be brought to recover any tax or assessment paid or to declare void the proceedings to locate and establish any drain, or to enjoin any tax or assessment levied or ordered to be levied for the payment of the labor and expense thereof, shall, if there be manifest error in the proceedings, allow the plaintiff in action to show that he has been injured thereby. The court may on application of either party, appoint a competent person or persons, to examine the premises, or to survey the same, or both, as may be deemed necessary. [*Act approved March 7, 1905, Art. V, § 11.*] (9th Sess. Chap. 106.)

2457. *Same.*—The court in which such proceedings are begun shall allow proof that the drain was necessary and conducive to the public health, convenience or welfare, and that all the steps required by law have been substantially complied with, notwithstanding the record required to be kept by the county drain commissioner. In case no substantial error is found, the court may

correct any gross injustice in the award of damages, or assessment of benefits, as may appear after hearing the proofs and allegations on both sides and shall make such order in the premises as shall be just and equitable, and may order that such tax or assessment remain on the tax roll for collection or order the same to be relieved, or may perpetually enjoin the same, or any part thereof, or if the same has been paid under protest, may order the whole, or such part thereof as is just and equitable to be refunded. The costs of such proceedings, if error or injustice be shown, if error or injustice be shown, shall be apportioned among the parties, or if manifest error or injustice be shown, such costs shall be collected of the party bringing the action. [*Act approved March 7, 1905, Art. V, § 12.*] (9th Sess. Chap. 106.)

2458. *Commissioner may reassess.*—Whenever any drain has been located and established and the work of construction completed or partly completed, and payment or provisions for payment for the same has not been legally made, the county drain commissioner shall, on application being made to him by any person or persons interested in the construction and maintenance of the said drain and the assessment of taxes therefor and for the payment of the same, without unnecessary delay proceed to relay and complete such drain under the provisions of this act, and re-assess upon such lands benefited by said drain and the original cost thereof, together with the expense of relaying and completing, and continue so to do until said drain has been legally established and constructed: *Provided*, That on such relay or completion of drain proceedings it shall not be necessary to readvertise a day of letting, but he shall advertise a day of review for benefits, which review may be held in the office of the county drain commissioner: *Provided further*, That any person who has paid the tax for benefits assessed against him for such drain shall be allowed the amount so paid and the county treasurer or other officer authorized to receive payment for taxes assessed in any county or city shall accept the receipt heretofore issued or the certificate of the county treasurer that such taxes were paid, for the payment of such drain taxes as cash and the same to be applied on such renewed assessment. The receipt so received by the county treasurer or other officer shall be credited to him and allowed as money. [*Act approved March 7, 1905, Art. V, § 13.*] (9th Sess. Chap. 106.)

2459. *County commissioners may correct assessment roll.*—In case any drain tax assessed, shall be set aside except for causes that would deprive the county drain commissioner of jurisdiction to construct the drain, the commissioner may begin proceedings anew at the stage where they shall be correct. In case a drain tax can or may be set aside for error in description or other defects in the county drain commissioner's or county treasurer's

roll, the county drain commissioner shall report same to the board of county commissioners at their next regular session who shall order the same reassessed upon the proper description. Such report may be made at any time before the sale of the land for such tax. [Act approved March 7, 1905, Art. V, § 14.] (9th Sess. Chap. 106.)

2460. *Drain commissioner a party to actions.*—In any suit brought to set aside any drain tax, in any way attacking the legality of any drain proceedings, the county drain commissioner shall be made a party to said suit, and it shall be the duty of the prosecuting attorney of the county where said drain is situated to defend said drain proceedings. [Act approved March 7, 1905, Art. V, § 15.] (9th Sess. Chap. 106.)

CHAPTER VI.

DRAINS TRAVERSING MORE THAN ONE COUNTY.

Section 2461. Application may be made to drain commissioner of either county.

“ 2462. *Commissioners of other counties affected must be notified of application.*

“ 2463. *Appointment of commissioners.*

“ 2464. *Proceedings of commissioners.*

“ 2465. *Apportionment of benefits between counties.*

“ 2466. *Records.*

“ 2467. *Drains in adjoining states.*

“ 2468. *Maintenance of drains passing through several counties.*

2461. *Application may be made to drain commissioner of either county.*—Whenever it may be desired to construct a drain traversing more than one county or affecting lands lying in more than one county, application therefor shall be made to the county drain commissioner of either county traversed by the proposed drain. Such application shall be subject to the same conditions and the applicants to the same obligations and liabilities as in other drains under this act. [Act approved March 7, 1905, Art. VI, § 1.] (9th Sess. Chap. 106.)

2462. *Commissioners of other counties affected must be notified of application.*—If, upon examination, the county drain commissioner shall deem the same to be necessary and for the good of the public health, convenience or welfare, he shall, as soon as practicable thereafter, fix a time and place of meeting, and notify the county drain commissioner or commissioners of such other county or counties to that effect, and furnish him or each of them with a certified copy of such application. Such county drain commissioner or commissioners shall, at the time and place as fixed above, meet with the county drain commissioner having the original application, and they shall thereupon and thereafter

jointly take all steps, and perform all acts, and sign all papers, as county drain commissioners are required to do singly in the case of other drains, including the application to the district court. [*Act approved March 7, 1905, Art. VI, § 2.*] (9th Sess. Chap. 106.)

2463. *Appointment of commissioners.*—In case all the persons whose lands are traversed by such drain, as proposed in this article, shall not within twenty days after the issue of the first order of determination as provided in this act, have voluntarily released the right of way therefor and all damages on account thereof, the county drain commissioners shall apply to the judge of each judicial district in which any such unreleased lands may be situated for the appointment of three special commissioners. When such application shall be made and when all papers shall have been found to be in conformity with the provisions of this act the court to whom such application has been made shall appoint such special commissioners and shall deliver to each commissioner a certified copy of the order of the appointment of such special commissioners. Such special commissioners shall be resident freeholders of the county and not residents of the district or districts to be traversed by the proposed drain in which they are appointed. All proceedings had in the appointment of special commissioners, under the provisions of this article shall be similar to those provided herein for the appointment of other special commissioners. [*Act approved March 7, 1905, Art. VI, § 3.*] (9th Sess. Chap. 106.)

2464. *Proceedings of commissioners.*—When such special drain commissioners shall have been notified of their appointment in the manner as provided herein, they shall at the time and place fixed by the district court, meet with the county drain commissioners of the respective counties in which such proposed drain is applied for, and view the whole line of such drain, or such portion thereof as shall be deemed sufficient, and shall, under the same oath and condition, perform their services in the same manner and with like effect as hereinbefore provided in this act for other special commissioners. Before any contract for the construction of any part of such drain shall be let, the county drain commissioners shall agree and determine upon the just per cent of the whole cost of construction which each county shall bear, which determination shall be in writing and signed by them, and a copy thereof made for each county drain commissioner whose county is affected by said drain: *Provided*, If said county drain commissioners cannot agree and determine the just per cent of the cost of construction that each county should bear, then it shall be their duty to select a county drain commissioner from some adjoining county, not affected by such drain, who shall have the power to determine said per cent for them, and said county drain commissioner's decision of the just per cent shall

be final, and they shall make copies of said determination as above provided. The costs and expenses of said other county drain commissioner shall be paid the same as those of the county drain commissioners of the counties affected by such drain. [*Act approved March 7, 1905, Art. VI, § 4.*] (9th Sess. Chap. 106.)

2465. *Apportionment of benefits between counties.*—Each commissioner shall thereupon assess within his own jurisdiction such amount, as may have been determined upon and shall assess against the counties such per cent thereof as may be justly charged against them severally by reason of benefits to the public health, convenience or welfare, or as a means of improving any highway, and the balance he shall apportion against the lands in proportion as they will be benefited thereby. Each county drain commissioner shall furnish such several assessments to the clerk of his own county, in which the lands affected thereby may be situated, and such assessments shall be computed, divided, spread, collected and returned in the same manner, in every respect, as provided in the case of other drains constructed under this act. Such assessments shall be subject to the same right of appeal and under the same conditions as hereinbefore provided. The taxes for such drains, shall be collected by the county treasurer of their respective counties to be disbursed by him. [*Act approved March 7, 1905, Art. VI, § 5.*] (9th Sess. Chap. 106.)

2466. *Records.*—A full record of such drains shall be made and entered by the several drain commissioners in the drain record-books of their respective counties, and a certified copy of all the papers relative to the construction of such drain shall be delivered to the other county drain commissioners by the drain commissioner having the original application which certified copies shall be filed in the office of the county clerk of their respective counties as original papers are required to be filed and with the same force and effect, and all the original papers shall be filed in the clerk's office in the county in which the application was originally made. The parts of each such drains situated and lying in any one county shall thereafter be under the care and supervision of the county drain commissioner of such county, subject, however, to the provisions of § 2468 (8) of this article. [*Act approved March 7, 1905, Art. VI, § 6.*] (9th Sess. Chap. 106.)

2467. *Drains in adjoining states.*—Whenever any proposed drain lies wholly or partly in an adjoining state, or the lands to be drained thereby lies partly in an adjoining state, application for the construction of such drain may be made to any county drain commissioner representing any county in this State in which any portion of such proposed drain or lands to be affected thereby lie, and the same proceedings shall be had touching the portion of such drain or the lands to be drained or affected thereby, lying within this State, as are provided in this act in the case

of drains and lands lying wholly within this State: *Provided*, That before any expense shall be incurred in relation to any such proposed drain, a voluntary release of the right of way for construction of such portion of such drain as may lie without this State and an agreement to keep the same or permit the same to be kept clear from obstruction, shall first be obtained from the parties owning lands outside of this State through which such drain or portion thereof is to pass and such release and agreement shall be filed with the said drain commissioner, and shall form a part of the record of his proceedings in the premises. [Act approved March 7, 1905, Art. VI, § 7.] (9th Sess. Chap. 106.)

2468. *Maintenance of drains passing through several counties.*—Whenever a drain heretofore established and which was constructed in and traverses more than one county needs cleaning out, deepening, widening and extending, any five freeholders of either county by which such drain is traversed (or affected), one or more of whom shall be owners of land which at the time of its construction was assessed therefor, may make application to the county drain commissioners of either county in which such drain is situated, setting forth the necessity thereof. If, upon examination, such drain commissioner shall deem the same to be necessary and for the good of the public health, he shall, as soon as practicable thereafter, notify the county drain commissioner or commissioners of such other counties and furnish them with a certified copy of such application, and they shall thereupon meet and jointly take such measures as are provided in this article relative to drain traversing more than one county, and act in like manner, as provided in this act in the manner of establishing drains. [Act approved March 7, 1905, Art. VI, § 8.] (9th Sess. Chap. 106.)

CHAPTER VII.

MAINTENANCE OF DRAINS.

- Section 2469. *Assessments for repairs. Letting contracts.*
“ 2470. *Application for cleaning out or widening drains.*
“ 2471. *Legal drains.*
“ 2472. *Powers of drain commissioner with reference to repairs.*
“ 2473. *Vacation of drains.*
“ 2474. *Drains may be relaid.*
“ 2475. *Obstruction of drains.*

2469. *Assessments for repairs. Letting contracts.*—Whenever a drain, or any portion thereof, needs cleaning out, straightening, deepening, widening or extending, and five freeholders of the district or districts in which such drain is situated, one or more of whom shall be owners of land liable to an assessment

for benefits in the cleaning out, deepening, widening, straightening or extending, as the case may be, may make application in writing to the county drain commissioner by whom it was constructed, or to his successor in office, setting forth its necessity, and the county drain commissioner shall, as soon as practicable thereafter, go upon the line thereof and carefully examine such drain, and if, in his judgment, the request of the applicants should be granted, he shall fix the per cent of the cost of cleaning out, that the owner or owners of the lands benefited thereby shall be assessed therefor: *Provided*, That such assessment shall be made according to benefits, and shall be subject to appeal the same as in the first instance, except that in all cases under this section where drains are only cleaned out, the cost thereof may, in the discretion of the drain commissioner, be assessed upon the same per cent fixed for the construction thereof: *And provided further*, That whenever any such drain shall need straightening, deepening, widening or extending, the same proceedings shall be had throughout in every respect as are provided in this act for the location and construction of a drain in the first instance. Drains may be cleaned out, deepened, widened, extended or straightened and for any or all such improvements only one application and proceedings will be necessary. It shall not be necessary for the applicants in such proceedings to further describe the drain or drains involved, than by referring to the recorded name or names thereof but a reference to a drain, describing it by its commencement, terminus and general direction shall be sufficient without giving the name of the drain. In cases where a natural water course shall need cleaning out, straightening, deepening or widening, where no valid proceedings have been had to previously establish such water course, it shall be immaterial whether the first proceedings shall be to clean out, lay out, straighten, deepen or widen; but the county drain commissioner shall take such steps as may be necessary to obtain a right of way, as heretofore provided and go on with his proceedings in the manner provided by law. [Act approved March 7, 1905, Art. VII, § 1.] (9th Sess. Chap. 106.)

2470. *Application for cleaning out or widening drains.*—Such assessment, and the collection, return and enforcement thereof shall be made in the same manner, and under the same provisions as in this act provided for drain taxes assessed, collected, returned and enforced in the first instance. In the case the necessity for such cleaning out arises from the act or neglect of any land owner, said act or neglect shall be taken into consideration by the county drain commissioner in such assessment. The work of cleaning out such drain shall be advertised and let, and the contracts therefor awarded and accepted and paid for as provided for in the first instance: *Provided*, That if there is a surplus in any drain fund the county drain commissioner may, in his discre-

tion, without application or advertisement, pay out of the same reasonable compensation for cleaning out any obstruction that may accumulate in the particular drain for which the fund was raised. [*Act approved March 7, 1905, Art. VII, § 2.*] (9th Sess. Chap. 106.)

2471. *Legal drains.*—All drains regularly established, opened or constructed under any provisions of law heretofore existing, shall be deemed to be legal drains under this act, and shall hereafter be under the jurisdiction of the county drain commissioner, and all drains traversing more than one county and heretofore constructed shall hereafter be under the jurisdiction of the county drain commissioner of the counties traversed by said drain acting jointly, and any drain that has been established for ten years shall be conclusively deemed to have been regularly established, and it shall be the duty of the county drain commissioner, where no records of such drains have been preserved, to see that the records of such drains are made in the most practicable manner in the drain records of their respective counties. [*Act approved March 7, 1905, Art. VII, § 3.*] (9th Sess. Chap. 106.)

2472. *Powers of drain commissioner with reference to repairs.*—All powers conferred by this act for establishing and constructing drains and for the enforcement of assessments thereof, shall also extend to and include the deepening, widening and extending of any drains which heretofore have been laid, or may hereafter be constructed; also to straightening, cleaning out and deepening the channels of creeks and streams, and the constructing, maintaining, remodeling and repairing of levees, dykes and barriers, for the purpose of drainage. The county drain commissioner may relocate or extend the line of any drain if the same be necessary, in order to provide a suitable outlet, in which case he shall cause a survey thereof to be made; *Provided*, That no proceeding affecting the rights of persons or property shall be had under this section except upon a like application, notice, hearing and award prescribed in this act for the construction of drains in the first instance. [*Act approved March 7, 1905, Art. VII, § 4.*] (9th Sess. Chap. 106.)

2473. *Vacation of drains.*—The county drain commissioner may, upon proper application as required in this act, and upon giving five days notice thereof by posting only, as provided for the letting in the first instance, declare any drain vacated and abandoned if in his judgment the same has ceased to be of public utility; *Provided*, That private rights of persons acquired by reason of the location and establishment of such drain shall not be interfered with, or in any way impaired thereby. The party so applying shall pay all expenses of such vacating and abandonment. [*Act approved March 7, 1905, Art. VII, § 5.*] (9th Sess. Chap. 106.)

2474. *Drains may be relaid.*—Drains for which application has been made or which have been constructed, under the provisions of any law heretofore enacted, may be laid, constructed, completed, relaid, cleaned out, widened, deepened or extended, as the case may be, under the provisions of this act. [*Act approved March 7, 1905, Art. VII, § 6.*] (9th Sess. Chap. 106.)

2475. *Obstruction of drains.*—Whenever any person shall obstruct any established drain it shall be the duty of the drain commissioner to cause such obstruction to be removed. The person causing such obstruction shall be liable for the expense attending the removal thereof, together with the charges of the drain commissioner, and the same shall be a lien upon the lands of the party causing or permitting such obstruction, and all of the expense shall by the drain commissioner be reported to the board of county commissioners together with the report of his doings in the premises, and by said board ordered spread upon the land of the offending party, should the same remain unpaid. *Provided* That the owner or occupants of the land on which the obstruction is claimed to exist shall be given notice in writing of at least five days to remove such obstruction. This provision as to obstruction of any drain shall not apply where the obstruction was caused by natural causes, but the owner of stock who shall permit his horses, cattle, pigs and other stock to obstruct any drain by tramping in it or otherwise, shall be deemed to be the party causing such obstruction. Nothing contained in this section shall in any way impede or bar the right of any person to make criminal complaint under any existing law for any obstruction of a drain. [*Act approved March 7, 1905, Art. VII, § 7.*] (9th Sess. Chap. 106.)

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.

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| Section | 2476. | <i>Appointment of deputies.</i> |
| " | 2477. | <i>Compensation of deputies.</i> |
| " | 2478. | <i>County clerks to procure books, blanks, et cetera.</i> |
| " | 2479. | <i>Compensation of drain commissioners.</i> |
| " | 2480. | <i>Accounts of drain commissioners to be verified.</i> |
| " | 2481. | <i>Compensation of juries and special commissioners.</i> |
| " | 2482. | <i>Duties of attorney general to revise blank forms.</i> |
| " | 2483. | <i>Penalty for obstruction of drains.</i> |
| " | 2484. | <i>Duty of county attorney to represent the state.</i> |
| " | 2485. | <i>Publication of notices.</i> |
| " | 2486. | <i>Disqualification of drain commissioner.</i> |
| " | 2487. | <i>Application for appointment of special drain commissioner.</i> |

- Section 2488. *Hearing of application.*
“ 2489. *Same.*
“ 2490. *Powers of special drain commissioners.*
“ 2491. *Bond of special drain commissioners.*
“ 2492. *Compensation of special drain commissioners.*
“ 2493. *Assessments and payments by special drain commissioner.*
“ 2494. *Special drain commissioners to deliver papers and proceedings to regular commissioners.*
“ 2495. *Special drain commissioners for drains in several counties.*
“ 2496. *Expenses of special drain commissioners.*
“ 2497. *Drains of public highways to be paid for out of road funds.*

2476. *Appointment of deputies.*—The county commissioners may appoint one deputy or more whose duty it shall be to act in the place of the county drain commissioner when under the provisions of this act they may deem it necessary. Such deputy or deputies when so appointed, shall file a bond with the county commissioners to be approved by them in the sum of one thousand dollars for the faithful performance of duties. Such appointments, when so made, shall be in writing, and filed with the clerk of the county. [Act approved March 7, 1905, Art. VIII, § 1.] (9th Sess. Chap. 106.)

2477. *Compensation of deputies.*—Deputy county drain commissioners shall make a report to the county drain commissioner of all work performed by them on or before the first Wednesday in September in each year and shall receive for their compensation the sum of three dollars per day for each day actually and necessarily spent by them in the discharge of their duties, as prescribed in § 2476 (1) of this chapter. [Act approved March 7, 1905, Art. VIII, § 2.] (9th Sess. Chap. 106.)

2478. *County clerks to procure books, blanks, et cetera.*—County clerks shall be authorized and it shall be their duty to procure at the expense of their respective counties the necessary books, blanks and stationery for the use of drain commissioners and each county drain commissioner shall furnish upon request blank applications to any person who may desire to file an application for the locating of any drain. [Act approved March 7, 1905, Art. VIII, § 3.] (9th Sess. Chap. 106.)

2479. *Compensation of drain commissioners.*—Drain commissioners shall receive for their services not to exceed five dollars per day for each day actually and necessarily spent by them in the discharge of the duties of their office. [Act approved March 7, 1905, Art. VIII, § 4.] (9th Sess. Chap. 106.)

2480. *Accounts of drain commissioners to be verified.*—The accounts of such drain commissioner or his deputy shall be verified

by the oath of the drain commissioner or deputy. [*Act approved March 7, 1905, Art. VIII, § 5.*] (9th Sess. Chap. 106.)

2481. *Compensation of juries and special commissioners.*—Juries and special commissioners shall receive the same compensation as the deputy county drain commissioners, and newspaper publishers shall receive contract rates for advertising. [*Act approved March 7, 1905, Art. VIII, § 6.*] (9th Sess. Chap. 106.)

2482. *Duties of attorney general to revise blank forms.*—It shall be the duty of the Attorney General upon the passage of this act to revise, or cause the same to be done under his supervision, the set of blank forms now in use and required under the provisions of this act, to conform to the said provisions thereof; and it shall be the duty of the Secretary of State to publish a sufficient number of copies of this act in pamphlet form with an index thereto, together with an appendix containing a copy of all such blank forms. [*Act approved March 7, 1905, Art. VIII, § 7.*] (9th Sess. Chap. 106.)

2483. *Penalty for obstruction of drains.*—If any person shall wilfully or maliciously remove any section or grade stake set along the line of any drain, or obstruct or injure any drain, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars, and the costs of prosecution or in default of the payment thereof, by imprisonment in the county jail not exceeding ninety days. [*Act approved March 7, 1905, Art. VIII, § 8.*] (9th Sess. Chap. 106.)

2484. *Duty of county attorney to represent the state.*—In all proceedings under this act when the State shall be an interested party and liable to be assessed for benefits, it shall be the duty of the prosecuting attorney of the county in which such lands are situated, to represent the interests of the State, and to appear in its behalf, and he shall make a report of his actions in each case to the Register of the Land Office. [*Act approved March 7, 1905, Art. VII, § 9.*] (9th Sess. Chap. 106.)

2485. *Publication of notices.*—The publication of all matters provided for in this act shall be by order and direction of the county commissioners. [*Act approved March 7, 1905, Art. VIII, § 10.*] (9th Sess. Chap. 106.)

2486. *Disqualification of drain commissioner.*—Whenever the county drain commissioner of any county shall receive a petition asking for the laying out, cleaning out, deepening or widening of any drain, or a petition asking proceedings by virtue of which any assessment upon lands for benefits received would result, wherein such county drain commissioner shall be interested by reason of himself, wife or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, and in cases where such county drain commissioner may be otherwise disqualified to act in the premises,

such county drain commissioner shall file such petition with the judge of the District Court, together with a statement signed by him, showing that he is disqualified to act in the premises. [*Act approved March 7, 1905, Art. VIII, § 11.*] (9th Sess. Chap. 106.)

2487. *Application for appointment of special drain commissioner.*—Where the fact of such disqualification is known to the signers of the petition, they may file such petition directly with the judge of the district court at their option, requesting the appointment of a special county drain commissioner to act upon the drain question. [*Act approved March 7, 1905, Art. VIII, § 12.*] (9th Sess. Chap. 106.)

2488. *Hearing of application.*—Upon receiving such petition, and certificate or request aforesaid, the judge of the district court shall give notice by publication of the filing of a petition, and of a day of hearing to consider the appointment of such special county drain commissioner. Such notice shall recite that a petition affecting a certain drain, naming the location in the townships to be affected thereby, has been filed with him, and that it is claimed that the county drain commissioner is disqualified to act thereon, and shall fix the day of hearing to determine whether such county drain commissioner is disqualified, and if he is, to appoint a special county drain commissioner in the premises. Such notice shall be printed in some newspaper published and of general circulation in the county in which the drain is situated for two weeks next prior to the day of hearing so fixed. Such publication shall be full and complete notice to any and all parties in interest. [*Act approved March 7, 1905, Art. VIII, § 13.*] (9th Sess. Chap. 106.)

2489. *Same.*—On such day of hearing or to such other time or times as the court may adjourn, not exceeding thirty days in all, the court shall proceed to hear the allegation of the parties in interest and shall determine whether or not the county drain commissioner is disqualified to act in the premises. If the county drain commissioners shall be found not to be disqualified, the court shall order the proceedings before it dismissed and turn such petition over to the county drain commissioner for his action thereon. If the county drain commissioner shall be found not to be disqualified, the court shall order the proceedings before it dismissed and turn such petition over to the county drain commissioner for his action thereon. If the county drain commissioner shall be found to be disqualified in the premise, the court shall thereupon appoint some disinterested resident of said county not a resident or freeholder of the districts proposed to be affected by the drain in question, to act as a special county drain commissioner of and over the drain in question. [*Act approved March 7, 1905, Art. VIII, § 14.*] (9th Sess. Chap. 106.)

2490. *Powers of special drain commissioners.*—For the purpose of carrying on and completing the proceedings on said drain, and the construction and work thereon, such special county drain commissioner shall have all of the powers of the county drain commissioner over said drain and its drainage or assessing district, and shall take all of the steps and proceedings the county drain commissioner should take by law in like circumstances where he is not interested. [Act approved March 7, 1905, Art. VIII, § 15.] (9th Sess. Chap. 106.)

2491. *Bond of special drain commissioners.*—Such special county drain commissioner shall qualify within ten days after notice of such appointment before the Clerk of the District Court giving a bond in the penal sum of two thousand dollars, with surety or sureties to be approved by such clerk, conditioned in the same manner as is required in the bond of the county drain commissioner. [Act approved March 7, 1905, Art. VIII, § 16.] (9th Sess. Chap. 106.)

2492. *Compensation of special drain commissioners.*—Such special county drain commissioner shall receive the same compensation as shall be allowed to the county drain commissioner, and his services shall be allowed in the same manner as is or shall be provided for allowing the services of the county drain commissioner, and shall be paid from the drain fund of the drain upon which he works. [Act approved March 7, 1905, Art. VIII, § 17.] (9th Sess. Chap. 106.)

2493. *Assessments and payments by special drain commissioner*—Such special county drain commissioner shall make his assessment for benefits, and rolls upon such drain, and deliver the same to the county drain commissioner, by him to be delivered to the proper officers with his other rolls. Such special county drain commissioners shall likewise certify to the county commissioners orders to be drawn upon such drain fund, and the county commissioners shall draw the orders so certified; *Provided*, The county commissioners shall not be obliged to draw such orders if they shall ascertain that the work for which they are to be given is not done as certified. [Act approved March 7, 1905, Art. VIII, § 18.] (9th Sess. Chap. 106.)

2494. *Special drain commissioners to deliver papers and proceedings to regular commissioners.*—On the completion of the proceedings and the construction of the drain in question, such special county drain commissioner shall deliver all of his papers and proceedings upon said drain to the county drain commissioner to be by him recorded as in other cases. [Act approved March 7, 1905, Art. VIII, § 19.] (9th Sess. Chap. 106.)

2495. *Special drain commissioners for drains in several counties.*—In the case of a drain affecting more than one county, and any county drain commissioner shall be disqualified to act

thereon, a special county drain commissioner for that county shall be appointed in the manner herein provided, with the powers and duties herein provided. [Act approved March 7, 1905, Art. VIII, § 20.] (9th Sess. Chap. 106.)

2496. *Expenses of special drain commissioners.*—The county drain commissioner shall furnish such special drain commissioner the necessary papers and stationery to be paid out of the general fund of the county. [Act approved March 7, 1905, Art. VIII, § 1.] (9th Sess. Chap. 106.)

2497. *Drains of public highways to be paid for out of road funds.*—When any drain constructed under this act, drains any public highway, the county, in which such highway is situated, shall be liable for the benefit to such highway, and shall pay therefor out of the road fund of the county. Such benefit shall be determined in the same manner as are benefits to private lands. [Act approved March 7, 1905, Art. VIII, § 22.] (9th Sess. Chap. 106.)

TITLE XII.

REVENUE.

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CHAPTER I.

PROPERTY LIABLE TO TAXATION.

Section 2498. *Property subject to taxation.*

“ 2499. *Exemptions.*

“ 2500. *Taxation of mines.*

2498. (§ 3670.) *Property subject to taxation.*—All property in this state is subject to taxation, except as provided in the next section.

Hilburn v. St. P. R. Co., 23 Mont. 242; 58 Pac. 555. There must be one tax roll for all purposes and the board of county commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns,

which have ordinances providing for the assessment and collection of their own taxes.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 952.

2499. (§ 3671.) *Exemptions.*—The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity are exempt from taxation, but no more land than is necessary for such purpose is exempt.

Courtney v. Missoula Co., 21 Mont. 592; 55 Pac. 359.

2500. (§ 3672.) *Taxation of mines.*—All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof, so used for other than mining purposes shall be taxed at its full value for such other purposes; and all machinery used in mining and all property and surface improvements upon or appurtenant to mines and mining claims which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims shall be taxed as other personal property.

M. C. Co. v. Livingston, 21 Mont. 59; 52 Pac. 780. The annual net proceeds of coal mines are subject to taxation.

Birney v. Warren, 28 Mont. 66; 72 Pac. 294. Machinery used in mining and property and surface improvements upon mines and mining claims, which

have a value independent of such mines and claims, are properly assessed as personal property.

Murray v. Hinds, 30 Mont. 469; 76 Pac. 1039. This section follows the language of the constitution.

See note to Section 3, Article XII.

CHAPTER II.

DEFINITIONS.

2501. (§ 3680.) *Definition of terms.*—Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them.

First—The term “property” includes moneys, credits, bonds, stocks, franchises and all other matters and things, real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term “real estate” includes:

1. The possession of, claim to, ownership of, or right to, the possession of land.

2. All mines, minerals and quarries in and under the land, subject to the provisions of § 2500 (3672), of this title; all timber belonging to individuals or corporations growing or being on the lands of the United States, and all rights and privileges appertaining thereto.

3. Improvements.

Third—The term “improvements” includes:

All buildings, structures, fixtures, fences and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth—The term “personal property” includes everything which is the subject of ownership, not included within the meaning of the term “real estate” and “improvements.”

Fifth—The terms “value” and “full cash value” mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term “credit” means those solvent debts, secured or unsecured, owing to a person.

The term “debts” means those secured or unsecured liabilities, owing by a person.

In making up the amount of credits which any person is required to list, he will be entitled to deduct from the gross amount the amount of all bona fide debts owing by him, but no acknowledgment of indebtedness not founded on actual consideration, and no such acknowledgment made for the purpose of being so deducted must be considered a debt within the intent of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society, nor on account of a subscription to or installment payable on the capital stock of any company or corporation; and no liability of any person or persons as surety for another must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor, under oath, the name or names of the persons to whom such party is indebted, and the amount of such indebtedness to each, and also that such indebtedness is not barred by the statute of limitations.

First N. Bank v. Province, 20 Mont. 374; 51 Pac. 821. Personal property owned by a national bank is not subject to taxation under state laws.

Courtney v. Missoula Co., 21 Mont. 594; 55 Pac. 360. For the purposes of taxation, “property” includes “real estate” and within the definition of “real estate” is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to tax-

ation as the property of the purchaser.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 952. Stocks of a state bank or trust company fall within the definition of the term “property” as given in subdivisions 1 and 4 of this section.

Clark v. Maher, 34 Mont. 400; 87 Pac. 274. Moneys due from other banks and bankers are credits within the definition of this section.

Western T. Co. v. Modesto Co., 149 Cal. 666; 87 Pac. 190.

CHAPTER III.

ASSESSMENT OF PROPERTY.

- Section 2502. *Property assessed at cash value.*
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- " 2504. *What deductions made.*
- " 2505. *How made.*
- " 2506. *National banks out of state.*
- " 2507. *Private banks to give statement.*
- " 2508. *Railroads, how assessed.*
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- " 2511. *Statement what to contain.*
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- “ 2548. *Statement by assessor to state board of equalization.*
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- “ 2552. *List of lands sold by state to be transmitted by state land agent.*
- “ 2553. *Assessors liable for unassessed property.*
- “ 2554. *County attorney must prosecute.*
- “ 2555. *Judgment, when entered against assessor.*
- “ 2556. *Assessment of railroads.*
- “ 2557. *Assessment, how made.*
- “ 2558. *State board of equalization must transmit statement to county clerk.*
- “ 2559. *County commissioners enter assessment order.*
- “ 2560. *Dissatisfied owners of railroads may apply again.*
- “ 2561. *Record of assessment and apportionment.*
- “ 2562. *Basis of taxation.*

2502. (§ 3690.) *Property assessed at cash value.*—All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.

First National Bank v. Province, 20 81 Pac. 952.
 Mont. 374; 51 Pac. 821. Danforth v. Livingston, 23 Mont. 562;
 State v. Fortune, 24 Mont. 157; 60 59 Pac. 917.
 Pac. 1087. Crocker v. Scott, 149 Cal. 585; 87
 Daly Bank v. Board, 33 Mont. 106; Pac. 102.

2503. (§ 3691.) *Stock in banking corporations, how assessed.*—The stockholders in every bank or banking association organized under the authority of this state or the United States, must be assessed and taxed on the value of their shares of stock therein, in the county, town, city or district where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. To aid the assessor in determining the value of such shares of stock, the cashier or other accounting officer of every such bank must furnish a verified statement to the assessor, showing the amount and number of shares of the capital stock of each bank, the amount of its sur-

plus or reserve fund, the amount of investments in real estate, which real estate must be assessed and taxed as other real estate.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 952.

First N. Bank v. Province, 20 Mont. 376; 51 Pac. 822.

2504. (§ 3692.) *What deductions made.*—In the assessment of the shares of stock mentioned in the next preceding section, each stockholder must be allowed all the deductions and exemptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this state, and the assessment and taxation must not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state.

Daly Bank v. Board, 33 Mont. 103; 81 Pac. 950.

2505. (§ 3693.) *How made.*—In making such assessment, there must also be deducted from the value of such shares, such sum as is in the same proportion to such value as the assessed value of the real estate of such bank or banking association in which such shares are held, bears to the whole amount of the capital stock of such bank or banking association.

Daly Bank v. Board, 33 Mont. 106; 81 Pac. 951.

First N. Bank v. Province, 20 Mont. 377; 51 Pac. 822.

2506. (§ 3694.) *National banks out of state.*—The shares of the capital stock of banks organized under the laws of the United States, not located in this state, owned by residents of this state, are not subject to taxation.

Daly Bank v. Board, 33 Mont. 103; 81 Pac. 950.

First N. Bank v. Province, 20 Mont. 377; 51 Pac. 822.

2507. *Taxation of private bankers and brokers.*—Every Private Banker, Broker or Dealer in Stocks must make out and deliver to the assessor, when required to list personal property, a verified statement containing:

First: The amount of money on hand, or in transit.

Second: The amount of funds in the hands of other banks, brokers or others subject to draft.

Third: The amount of checks or cash items, the amount thereof not being included in either of the preceding items.

Fourth: The amount of bonds and stocks of every kind, (except United States bonds) and shares of capital stock of joint or other companies or corporations held as an investment, or in any way representing assets.

Fifth: All other property appertaining to said business other than real estate, which real estate must be listed and assessed as other real estate is listed and assessed under this Title.

Sixth: The amount of all deposits made by other persons in his custody.

Seventh: The amount of all accounts payable other than current deposit accounts.

Eighth: The amount of capital invested in said company.

Ninth: The amount of surplus or undivided profits.

In making up the tax list of the property of such Private Banker, Broker or Dealer in Stocks for taxation, such property to be taxed shall be the amount of capital invested either in real estate or cash, the amount of surplus, and undivided profits. [Act approved February 21, 1905.] (9th Sess. Chap. 25.)

Clark v. Maher, 34 Mont. 399; 87 Pac. 273.

2508. (§ 3696.) *Railroads, how assessed.*—The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state, must be assessed by the state board of equalization, as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority they must be assessed in the county in which the corporations, firms or persons owning or holding them have their principal place of business.

2509. (§ 3697.) *Land, how assessed. Mortgages, how assessed.*—All other taxable property must be assessed in the county, city or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The assessor must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. He must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; *Provided*, That all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line and opposite the description thereof, the separate value of the same, and the value of the improvements thereon. [Act approved March 14, 1895.]

Flowerree Co. v. L. & C. Co., 33 Mont. 35; 81 Pac. 398.

Coburn C. Co. v. Small, 35 Mont. 293; 88 Pac. 955.

2510. (§ 3700.) *When assessment to be made. Credits must be assessed, how.*—The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and all property in his county subject to taxation, except such as is required to be as-

sessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed or in whose possession or control it was at twelve o'clock m., of the first Monday of March next preceding; but no mistake in the name of the owner, or supposed owner, of real property, renders the assessment thereof invalid. Credits must be assessed as provided in § 2501 (3680), subdivision 6.

M. C. Co. v. Livingston, 21 Mont. 59; 52 Pac. 780.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1. The listing of lands for taxation to the wrong person is no ground for restraining the tax sale, but is an irregularity, which, of itself, does not avoid the assessment, nor render the tax illegal.

Danforth v. Livingston, 23 Mont. 558; 59 Pac. 916.

Birney v. Warren, 28 Mont. 68; 72 Pac. 293. Personal property must be assessed to the person by whom it is

owned or claimed, and if the name of an absent owner is unknown it must be assessed to "unknown owners." This section is mandatory, and a misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment and renders a sale thereunder void. The rule of *caveat emptor* applies to sales of personal property for delinquent taxes.

Flowerree Co. v. L. & C. Co., 33 Mont. 35; 81 Pac. 398.

Coburn C. Co. v. Small, 35 Mont. 293; 88 Pac. 955.

2511. (§ 3701.) *Statement what to contain.*—He must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately.

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government, improvements and personal property, including all vessels, steamers and other water craft, and all taxable, state, county, city or other municipal or public bonds, and the taxable bonds of any person, firm or corporation, and deposits of money, gold dust or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found, all mortgages, deeds of trust, contracts and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier or managing agent, deducting from the sum total of such credits only such debts, secured or unsecured, as may be owing by such person, firm or corporation. No debt is to be so deducted unless the statement shows the amount of such debt, as stated under oath, in the aggregate. In case of banks, the statement is not required to show the debts in detail, or to whom it is owing; but the assessor has the privilege of examining the books of such banks to verify said statement. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer; need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation or association of persons owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

Western Ranches v. Custer Co., 28 Mont. 283; 72 Pac. 661. An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained.

Flowerree Co. v. L. & C. Co., 33 Mont. 36; 81 Pac. 398. It was the duty of the county assessor of Lewis and Clark County to require from the agent of the company to be assessed a verified list of its property in his county on the first Monday of March, 1904. This list must have shown the county in which the

property was situated, or in which it was liable to taxation.

Clark v. Maher, 34 Mont. 399; 87 Pac. 274. There is a conflict between this section and that portion of subdivision 8, section 3695, providing for a deduction of deposits (debts), but this section must prevail.

See note to sections 11 and 16, article XII, Constitution.

Daly Bank v. Commissioners, 33 Mont. 107; 81 Pac. 950.

2512. (§ 3702.) *County commissioners to furnish blanks, etc.*—The board of county commissioners must furnish the assessor with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ———, do swear that I am a resident of the county of (naming it), and that my postoffice address is ———; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association or company of which I am president, cashier, secretary or managing agent, owned, claimed, possessed or controlled, at twelve o'clock m., on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any

assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county board of equalization, must be stated in such form.

2513. (§ 3703.) *Statement to be filled out and returned to assessor.*—The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The assessor must either in person or by mail deliver to the person making the statement a copy of the same showing any corrections made thereto by such assessor.

2514. (§ 3704.) *General power of assessor.*—Every assessor has power:

1. To require any person found within such assessor's county to make and subscribe an affidavit, giving his name and place of residence, and postoffice address.

2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county; and he may exercise this power in any county where the person whom he desires to examine may be found, but has no power to require such persons to appear before him in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the assessor in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the assessor must, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. All moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county.

2515 (§ 3705.) *If statement refused, how assessment made.*—If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor

must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of county commissioners.

Savings Society v. San Francisco, 131 Cal. 359; 63 Pac. 665.

2516. (§ 3706.) *Assessment of unknown or absent owners.*—If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

Birney v. Warren, 28 Mont. 67; 72 Pac. 293.

2517. (§ 3707.) *Same.*—If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to “unknown owners.”

Birney v. Warren, 28 Mont. 67; 72 Pac. 293.

2518. (§ 3708.) *Property situated in another county.*—The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same, by mail, to the assessor of the proper county, who must assess the same as other taxable property therein.

Flowerree Co. v. L. & C. Co., 33 Mont. 37; 81 Pac. 398. Property shall be assessed in its home county, and where cattle are driven into Lewis and Clark county to be winter-fed with the intention of

having them returned to Teton county, the headquarters of the owner, a corporation, the home of such livestock for the purposes of taxation is in Teton county.

2519. (§ 3709.) *Consigned property.*—All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

2520. (§ 3710.) *Trustees, guardians, executors, etc.*—When a person is assessed as agent, trustee, bailee, guardian, executor or administrator, his representative designation must be added to his name and the assessment entered on a separate line from his individual assessment.

San Francisco v. Pennie, 93 Cal. 471; 29 Pac. 66.

2521. (§ 3711.) *Property of a firm or corporation, where assessed.*—The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

Flowerree Co. v. L. & C. Co., 33 Mont. 35; 81 Pac. 398. This section applies to all kinds of property. *Coburn C. Co. v. Small*, 35 Mont. 293; 88 Pac. 955.

2522. (§ 3712.) *Undistributed property of deceased persons.*—The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

San Francisco v. Pennie, 93 Cal. 471; 29 Pac. 66.

2523. (§ 3713.) *Capital stock and franchises of corporations, where assessed.*—The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town or district where the principal office or place of business of such corporation or person is

located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

2524. (§ 3514.) *Personal property of merchant or manufacturer.*—The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

Flowerree Co. v. L. & C. Co., 33 Mont.
35; 81 Pac. 398.

Coburn C. Co. v. Small, 35 Mont. 293;
88 Pac. 955.

2525. (§ 3715.) *Property of express and stage companies, etc.*—The personal property of express, transportation and stage companies, steamboats, vessels and other water craft must be listed and assessed in the county, town or district where such property is usually kept.

Flowerree Co. v. L. & C. Co., 33 Mont.
35; 81 Pac. 398.

Coburn C. Co. v. Small, 35 Mont. 293;
88 Pac. 955.

2526. (§ 3716.) *Gas and water companies.*—The personal property and franchises of gas and water companies must be listed and assessed in the county, town or district where the principal works are located.

Flowerree Co. v. L. & C. Co., 33 Mont.
35; 81 Pac. 398.

Coburn C. Co. v. Small, 35 Mont. 294;
88 Pac. 955.

2527. (§ 3717.) *Gas and water mains.*—Gas and water mains and pipes laid in roads, streets or alleys are personal property.

2528. (§ 3718.) *Street railroads, bridges and ferries.*—Street railroads and bridges, and ferries and their franchises, owned by persons or corporations, must be listed and assessed in the county, town or district where such property, or any portion thereof, is located, and the track of the railroad and the bridge are personal property.

2529. (§ 3719.) *Railroads, telegraph, telephone and electric light lines.*—Railroads operated in one county and not assessed by the state board of equalization; telegraph, telephone and electric light lines and similar improvements, and the franchises; canals, ditches and flumes, and the franchises of the same, must be listed and assessed in the county in which such property is located, and the assessor must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement, containing a list of the number of miles such property is operated in the county, and the value thereof.

2530. (§ 3720.) *Live stock, where assessed.*—Live stock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit, nor until it arrives in the county where the person owning the same resides, and must be listed and assessed in such county. If such live stock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county.

Flowerree Co. v. L. & C. Co., 33 Mont.
39; 81 Pac. 400. This section has not
been repealed.

Coburn C. Co. v. Small, 35 Mont. 294;
88 Pac. 955.

2531. *Stock brought into the state for grazing.*—All live stock brought into this state by any person or persons whomsoever, for the purpose of being grazed for any length of time whatsoever, shall be taxed for the year in which such live stock shall be brought into the State. [Act approved March 14th, 1901, § 1.] (7th Sess. 57.)

2532. *Certificate to be filed with county clerk.*—It shall be the duty of every person bringing live stock into any county in this state, for grazing purposes as herein before provided, to set out in a certificate under the hand of such person, or his agent, the number of live stock, with the brands, if any, upon the same, and file the said certificate with the county clerk of the county in which said live stock shall be first brought for the above purpose. [Act approved March 14th, 1901, § 2.] (7th Sess. 57.)

2533. *Assessment of stock listed.*—It shall be the duty of the county clerk, upon such certificate being filed as aforesaid, to keep an index of the same in his office for the inspection of all persons, and within ten days after the filing of the same to certify a copy of said certificate under his hand to the assessor of the County. It shall be the duty of the County Assessor to immediately enter an abstract of said certificate upon the tax list for the current year. If such certificate is filed with Assessor prior to the annual levy of taxes by the board of County Commissioners, such assessor shall enter said assessment upon assessment rolls, unless such rolls have already been completed, in which event he shall make a supplemental report, including all assessments of this character. If such assessment is made after the annual levy has been made, the said Assessor shall transmit said copy to the County treasurer of the county, who shall immediately enter an abstract of such certificate upon the tax list for the said year, and shall proceed to collect the sum of money due and payable, from the person so keeping and herding said live stock, or his agent, and in the event that it is necessary for the said treasurer to collect the taxes due upon such live stock by distress and sale of said live stock, and all necessary expenses and costs accruing from such sale shall be deducted in the same manner as is now provided by law for the collection of taxes assessed upon personal property, without any further warrant to him for that purpose. [Act approved March 14th, 1901, § 3.] (7th Sess. 58.)

2534. *Deposit or bond to secure tax.*—Any person named in § 2532 (2) of this Act, or his agent, who shall bring live stock into this state for grazing purposes, prior to the levy of the regular tax by the board of County Commissioners of the county into which the said live stock are brought, shall be required by the assessor of the county wherein the said live stock may be kept and herded to

pay the sum of forty cents on each and every head of cattle, and ten cents on each and every head of sheep, or any other live stock, brought into such county for the purpose of grazing as aforesaid; provided, however, that the said payment of forty cents per head on cattle and ten cents per head upon sheep and other live stock, shall at the end of such year be returned to the said person paying the same, upon a showing that he has paid the regular annual tax in that county for that year, upon all of said property the same as other persons have paid upon like property permanently located in this State; or such portion of said payment shall be returned as may exceed the amount of regular county taxes, for the said year; *provided*, that such rebate shall be paid in a county warrant or certificate of indebtedness, issued by order of the board of county commissioners of said county; and, *provided*, further, that any person so bringing any live stock into any county of this State from any other state or territory, in the manner hereinbefore provided, in lieu of the payment of the said forty cents on each and every head of cattle, and ten cents per head on each and every head of sheep or other live stock, may execute a bond to said county, with two or more sureties, to be approved by the county treasurer, conditional that such person will regularly list the said live stock for taxation in such county for that year, in the manner provided by law, and will punctually pay all taxes which may become due thereon during that year, and in such case the said charge of forty cents per head upon cattle and ten cents per head upon sheep and other live stock, shall not be collected. [*Act approved March 14th, 1901, § 4.*] (7th Sess. 58-9.)

2535. *Penalties.*—Any person named in § 2532 (2) of this Act, or his agent, who shall bring any live stock into this state for grazing purposes, and shall keep and herd the same in any county of the state without first filing said certificate, and without paying the amount of money per head, as hereinbefore provided, or giving the bond named in § 2534 (4) of this Act, shall be fined in a sum of not less than ten dollars nor more than one hundred dollars and shall further forfeit and pay the sum of fifty cents for each and every head thereof, for the use of said county, which said forfeit shall be collected by a civil action in the name of the county in which the said live stock are, or were, so kept and herded. [*Act approved March 14th, 1901, § 5.*] (7th Sess. 59.)

2536. *Action to recover penalties.*—It shall be the duty of the county commissioners of the county in which such live stock shall be kept and herded without having first complied with the provisions of this Act, upon receiving satisfactory information of such fact, to institute such civil action in the name of the county, against the person so keeping or herding such live stock, or his agent. If the owner of such live stock be not known to such commissioners it shall be lawful to make the agent of such person,

or any person having the care and custody of such live stock the defendant in such action, and service of the summons upon such agent, or person having the care and custody of such live stock, shall be considered and held to be personal service upon the owner thereof. [*Act approved March 14th, 1901, § 6.*] (7th Sess. 59-60.)

2537. *Removal with intent to evade payment.*—If any person having the care and custody of such live stock shall, pending an action instituted as provided in the last section, drive or move said live stock out of the county with intent to move the same out of the state, or with intent to evade the payment of the forfeiture hereinbefore named, upon affidavit to that effect being made and filed in an action brought to recover said forfeiture or tax herein provided, writs of attachment may issue as in civil actions and the proceedings therein shall be as in other cases, except that no undertaking on attachment shall be required; and in addition thereto, any person so driving or moving such live stock shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, and by imprisonment in the county jail for not exceeding six months, for each and every offense. [*Act approved March 14th, 1901, § 7.*] (7th Sess. 60.)

2538. *Duty of board of equalization.*—In addition to the other duties prescribed by law, the assessor of each county is hereby required to present to the board of equalization of each county, a statement setting forth such live stock and all other property which has not been assessed, or which has been assessed for less than its correct value, by reason of erroneous reports, and it shall be the duty of said board of equalization to immediately, while sitting as such board, investigate and in the event that the person owning such property has been assessed for a smaller amount of property, or a less valuation than should properly have been given, to correct such assessment in the manner provided for the correction of assessment by the board of equalization. [*Act approved March 14th, 1901, § 8.*] (7th Sess. 60.)

2539. *Failure of officer to perform duty. Penalty.*—Any county officer or member of the board of county commissioners or board of equalization, who shall fail to perform the duties prescribed in this act, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than twenty five dollars, nor more than five hundred dollars. [*Act approved March 14th, 1901, § 9.*] (7th Sess. 60.)

2540. (§ 3721.) *Property and money in litigation.*—Money and property in litigation in possession of a county treasurer, or of a court or a clerk thereof, or receiver, must be assessed to such treasurer, clerk or receiver, and the taxes paid thereon under the direction of the court.

2541. (§ 3722.) *Property, concealed, etc.*—Any property wilfully concealed, removed, transferred or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of county commissioners.

Clunie v. Siebe, 112 Cal. 595; 44 Pac. 1064.

2542. (§ 3723.) *Property not assessed the previous year.*—Any property discovered by the assessor to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

Clunie v. Siebe, 112 Cal. 594; 44 Pac. 1064.

2543. (§ 3724.) *Property, how listed.*—The assessor must prepare an assessment book with appropriate headings, alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.
2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres (not exceeding in each and every tract six hundred and forty acres), locality and the improvements thereon.
3. City and town lots, naming the city or town, and number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.
4. All personal property, showing the number, kind, amount and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.
5. The cash value of real estate other than city or town lots.
6. The cash value of improvements on such real estate.
7. The cash value of city and town lots.
8. The cash value of improvements on city and town lots.
9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.
10. The cash value of all personal property, exclusive of money.
11. The amount of money.
12. Taxable improvements owned by the person, firm, association or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must

the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

16. Such other things as the state board of equalization may require.

Hilburn v. St. P. R. Co., 23 Mont. 242; 59 Pac. 917.
58 Pac. 555. Savings Society v. San Francisco, 146
Danforth v. Livingston, 23 Mont. 562; Cal. 680; 80 Pac. 1086.

2544. (§ 3725.) *Form of assessment book.*—The form of the assessment book must be as directed by the state board of equalization and in those counties for which said board does not prescribe a different form, it must be substantially as follows:

Assessment book of the property of ——— county, for the year 189—, assessed to the owner, when known, and if not known, to unknown owner.

Remarks			
Poll tax.....			
Total tax.....			
Total value of all property after equalization by the state board of equalization.			
Total value of all property for taxation.....			
Deductions on account of debts due.....			
Total value of all property.....			
Amount of money.....			
Value of personal property.....			
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon.			
Value of city and town lots.....			
Value of improvements thereon.....			
Value of real estate other than city and town lots.....			
Number of mines, value of same and net proceeds.....			
School, road or other district in which located.....			
Number of acres.....			
Description of Property.	Real estate other than city and town lots.	Block.....	Personal property (here items may be enumerated).
		Lot.....	
		Fraction.....	
		Range E. or W.....	
		Township N. or S.....	
		Section.....	
		Subdivision of section.....	
Residence			
Taxpayers' names.....			
When tax paid.....			

State v. Weston, 29 Mont. 129; 74 Pac. 417. The assessment book must be so kept that it will appear therefrom what property is within the limits

of cities or towns, and what is elsewhere.

Maurer v. Weatherby, 1 C. App., 245; 81 Pac. 1083.

2545. (§ 3726.) *Assessment, when completed.*—On or before the second Monday in July, in each year, the assessor must complete his assessment book. He must take and subscribe an affidavit in the assessment book, to be substantially as follows: "I, ———, assessor of ——— county, do swear that between the first Monday in March and the second Monday in July, eighteen hundred and ninety ———, I have made diligent inquiry and examination to ascertain all the property within the county, subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my judgment, information and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill-will or otherwise, nor allowed any one to escape a just and equal assessment through favor or reward or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment.

State v. Weston, 29 Mont. 130; 74 Pac. 417.

Miller v. Kern Co., 137 Cal. 523; 70 Pac. 549.

2546. (§ 3727.) *Map book.*—The assessor must, when directed so to do by the board of commissioners, in a map book make a plat of the various blocks within any incorporated city or town, and mark thereon in each subdivision the name of the person to whom it is assessed.

2547. (§ 3728.) *Assessment and map book delivered to and kept by clerk.*—As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof and of the time the board of commissioners will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

State v. Weston, 29 Mont. 130; 74 Pac. 415.

2548. (§ 3729.) *Statement by assessor to state board of equalization.*—On the second Monday in July in each year the assessor of each county must transmit to the state board of equalization a statement showing:

1. The several kinds of personal property.
2. The average and total value of each kind.
3. The number of live stock, number of bushels of grain, number of pounds or tons of any article sold by the pound or ton.
4. When practicable, the separate value of each class of land specifying the classes and the number of acres in each.

2549. (§ 3730.) *Penalty.*—Every assessor who fails to complete his assessment book, or who fails to transmit the statement

mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars, to be recovered on his official bond, for the use of the county, or to be deducted from his salary by the board of county commissioners.

2550. (§ 3731.) *Persons claiming ownership of property desiring to be assessed.*—Lands once described on the assessment book need not be described a second time, but any person claiming the same and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

Cavanaugh v. Jackson, 99 Cal. 675; 34 Pac. 509.

2551. (§ 3732.) *Commissioners to furnish assessor maps.*—The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and, if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages, or school districts, may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund.

2552. (§ 3733.) *List of lands sold by state to be transmitted by state land agent.*—On or before the first Monday in March in each year, the state land agent must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents or deeds have issued during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

Courtney v. Missoula Co., 21 Mont. 593; 55 Pac. 360. This section was enacted for the sole purpose of advising the county assessors respecting such lands as may have been sold by the state for

which either certificates of purchase or patents have issued, so that such lands might be listed to the vendees and assessed.

2553. (§ 3734.) *Assessors liable for unassessed property.*—The assessor and his sureties are liable on his official bond for all taxes on property within the county which, through his wilful failure or neglect, is unassessed.

2554. (§ 3735.) *County attorney must prosecute.*—The county attorney must, after the assessor completes the assessment book for the year, commence an action on the assessor's bond for the amount of taxes lost from such willful failure or neglect.

2555. (§ 3736.) *Judgment, when entered against assessor.*—On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

2556. (§ 3737.) *Assessment of railroads.*—The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating any rail-

road in more than one county in this state, must, on or before the first Monday in March of each year, furnish the said board a statement signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the first Monday in March in each year:

1. The whole number of miles of railroad in the state; and where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state owned or operated by such corporation, person or association.

2. The value of the roadway, roadbed and rails of the whole railroad, and the value of the same within the state.

3. The width of the right of way.

4. The number of each kind of all rolling stock used by such corporation, person or association in operating the entire railroad, including the part without the state.

5. Number, kind and value of rolling stock owned and operated in the state.

6. Number, kind and value of rolling stock used in the state, but not owned by the party making the returns.

7. Number, kind and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

8. The whole number of side tracks in each county, including the number of miles of track in each railroad yard in the state.

9. The number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight and other cars, or property owned or leased by such corporation, persons or association.

10. The number of sleeping and dining cars not owned by such corporation, person or association, but used in operating the railroads of such corporation, person or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

11. A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold, for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation or association giving the descrip-

tion. No assessment is invalid on account of a misdescription of the railroad or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person or association failing to furnish the statement is conclusive and final.

12. Also showing in detail for the year preceding the first of January:

First—The gross earnings of the entire road.

Second—The gross earnings of the road within the state, and, where the railroad is let to other operators, how much was derived by the lessor as rental.

Third—The cost of operating the entire road, exclusive of sinking fund, expenses of land department and money paid to the United States.

Fourth—Net income for such year and amount of dividend declared.

Fifth—Capital stock authorized.

Sixth—Capital stock paid in.

Seventh—Funded debt.

Eighth—Number of shares authorized.

Ninth—Number of shares of stock issued.

13. Any other facts the state board of equalization may require.

2557. (§ 3738.) *Assessment, how made.*—The state board of equalization must meet at the state capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the second Monday in August, and later if the business of the board requires it. At such meeting the board must assess the franchise, roadway, roadbed, rails and rolling stock, of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling stock must be assessed in the name of the person, corporation or association owning, leasing or using the same. Assessment must be made to the corporation, person or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state, and must include the right of way, bridges and culverts of the railroad. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation or association, except as above provided, are assessed by the assessor of the county wherein they are situate. Between the second and third Mondays of August, the board must apportion the total assessment of the franchise, roadway, roadbed, rails and rolling stock of each railroad to the counties in which such

railroad is located, in proportion to the number of miles of railroad laid in such counties.

Hilburn v. St. P. R. Co., 23 Mont.
242; 58 Pac. 555.

San Francisco v. Stockton, 149 Cal.
87; 84 Pac. 771.

2558. (§ 3739.) *State board of equalization must transmit statement to county clerk.*—The state board of equalization must, within the time mentioned in the preceding section, transmit by mail to the county clerk of each county to which such apportionment has been made, a statement showing the length of the main track of such railroad within the county, with a description of the whole of said track within the county, including the right of way, by metes and bounds or other description sufficient for identification, the assessed value per mile of the same as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails and rolling stock of such railroad within the state, and the amount apportioned to the county. The county clerk must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment book or roll as aforesaid, which shows the total value of all property for taxation of the county.

2559. (§ 3740.) *County commissioners enter assessment order.*—On the second Monday in September, the board of county commissioners must make, and cause to be entered in the proper record book, an order stating and declaring the length of main track of the railroad assessed by the state board of equalization within the county; the assessed value per mile of such railroad, the number of miles of track and the assessed value of such railroad, lying in each city, town, school and road district or lesser taxing district in the county, through which such railroad runs, as fixed by the state board of equalization, which constitutes the assessment value of said property for taxable purposes in such city, town, school, road or other district; and the county clerk must on application transmit a copy of each order or equalization to the city or town council or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railroad runs. All such railroad property is taxable upon said assessment, at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, school, road and lesser taxation districts, respectively; and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

2560. (§ 3741.) *Dissatisfied owners of railroads may apply again.*—If the owner of a railroad assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, under the pro-

vision of § 2584 (3801), between the third Monday in July and the second Monday in August, apply to the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it, so as to equalize the same with the assessment of other property in the state. If the board increases or lowers any assessment previously made by it, it must make a statement to the county clerk affected by the change in the assessment, of the change made, and he must note such change upon the assessment book of the county as directed by the board.

• 2561. (§ 3742.) *Record of assessment and apportionment.*—The state board of equalization must prepare each year a book, to be called “Record of Assessment of Railroads,” in which must be entered each assessment made by the board, either in writing, or by both writing and printing. Each assessment so entered must be signed by the president and secretary. The record of the apportionment of the assessments made by the board to the counties must be made in a separate book, to be called “Record of Apportionment of Railroad Assessments.” In such last described book must be entered the names of the railroads assessed by the board, the names of the corporations to which, or the name of the person or association to whom, each railroad was assessed, the whole number of miles of the railroad in the state, the number of miles in each county, the total assessment of the franchise, roadway, roadbed, rails and rolling stock for purposes of state taxation, and the amount of the apportionment of such total assessment to each county for county taxation.

2562. (§ 3743.) *Basis of taxation.*—The assessment made by the county assessor, and that of the state board of equalization, as apportioned by the boards of county commissioners to each city, town, school, road or other district in their respective counties, is the only basis of taxation for the county, or any subdivision thereof, except in incorporated cities and towns, and may also be taken as such basis in incorporated cities and towns when the proper authorities may so elect. All taxes upon road, school or other local districts must be collected in the same manner as county taxes.

Hilburn v. St. P. R. Co., 23 Mont. 242; 58 Pac. 555.

CHAPTER IV.

ASSESSMENT OF NET PROCEEDS OF MINES.

Section 2563. Owners of mines must make statement.

“ 2564. *Statement, what to contain.*

“ 2565. *What deductions are to be made.*

“ 2566. *Assessment book of the net proceeds of mines, what to contain.*

- Section 2567. Duties of the assessor and other officers.*
“ 2568. *Failure to make statement; duty of assessor.*
“ 2569. *Right of assessor to examine books, etc.*
“ 2570. *Improvements, etc., not exempt.*
“ 2571. *Tax, how collected, and tax a lien.*

2563. (§ 3760.) *Owners of mines must make statement.*—Every person, corporation or association engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper, coal, lead or other valuable mineral deposits, must, between the first and tenth days of June in each year, make out a statement of the gross yield of the above named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of June, and the value thereof. Such statement must be verified by the oath of such person, or the superintendent or managing agent of such corporation or association, who must deliver the same to the assessor of the county in which such mine or mines are situated.

M. C. Co. v. Livingston, 21 Mont. 59; of coal mines are subject to taxation.
52 Pac. 780. The annual net proceeds

2564. (§ 3761.) *Statement, what to contain.*—The statement mentioned in the preceding section must contain a true and correct account of the actual expenditures of money and labor in and about extracting the ore or mineral from the mine and transporting the same to the mill or reduction works, and the reduction of the ore and the conversion of the same into money, or its equivalent, during the year.

2565. (§ 3762.) *What deductions are to be made.*—In making the statement of the expenditures mentioned in the preceding section, there must be allowed all moneys expended for necessary labor, machinery and supplies needed and used in the mining operations, for improvements necessary in and about the working of the mine, for reducing the ores, for the construction of mills and reduction works used and operated in connection with the mine, for transporting the ore and for extracting the metals and minerals therefrom; but money invested in the mines or improvements during any year except the year immediately preceding such statement, must not be included therein. Such expenditures do not include the salaries, or any portion thereof, of any persons or officers not actually engaged in the working of the mine, or personally superintending the management thereof.

2566. (§ 3763.) *Assessment book of the net proceeds of mines, what to contain.*—The assessor must prepare, at the same time he prepares the general assessment book, another assessment book, called “The Assessment Book of the Net Proceeds of Mines,” alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed the net pro-

ceeds of all the mines in his county, and in which must be specified, in separate columns and under the appropriate head:

1. The name of the owner of the mine.
2. Description and location of the mine.
3. Number of tons extracted during the year.
4. Gross yield or value in dollars and cents.
5. Actual cost of extracting same from mine.
6. Actual cost of transportation to place of reduction or sale.
7. Actual cost of reduction or sale.
8. Cost of construction and repair of mines and reduction works during the year.
9. Net proceeds, or value, in dollars.
10. Total amount of tax.

2567. (§ 3764.) *Duties of the assessor and other officers.*—The duties of the assessor, county clerk, state board of equalization, and board of county commissioners, as to the assessment of the net proceeds of mines, the statements and returns to be made, the equalization thereof, and other official acts, are the same as those mentioned in chapter III., of this title, in regard to the assessment of other property.

2568. (§ 3765.) *Failure to make statement; duty of assessor.*—If any person, corporation or association engaged in mining, as mentioned in this chapter, refuses or neglects to make and deliver to the assessor of the county where the mines are located, the statement mentioned in this chapter, such assessor must list the property and assess, according to his knowledge and information, the amount of such tax in the manner provided by law for the assessment of other property where no statement is furnished.

2569. (§ 3766.) *Right of assessor to examine books, etc.*—The assessor, at any time, has the right to examine the books and accounts of any person, corporation or association engaged in mining, as mentioned in this chapter, in order to verify the statement made by such person, corporation or association, and if from such examination he finds such statement false, he must assess the net proceeds in the same manner as if no statement had been made and delivered.

2570. (§ 3767.) *Improvements, etc., not exempt.*—Nothing in this chapter contained must be construed so as to exempt from taxation the improvements, buildings, erections, structures or machinery placed upon any mining claim, or used in connection therewith, or supplies used either in the mills, reduction works or mines.

2571. (§ 3768.) *Tax, how collected, and tax a lien.*—The tax mentioned in the preceding sections must be collected and the payment thereof enforced as the collection and enforcement of other taxes are provided for, and every such tax is a lien upon the mines or mining claims from which the ores or minerals are

extracted, which lien attaches on the first Monday of March in each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes.

CHAPTER V.

EQUALIZATION OF TAXES.

ARTICLE I. COUNTY BOARDS OF EQUALIZATION.

II. STATE BOARD OF EQUALIZATION.

ARTICLE I.

COUNTY BOARDS OF EQUALIZATION.

- Section 2572. County commissioners, when to equalize assessment.*
- “ 2573. *Board empowered to equalize assessments.*
- “ 2574. *The person aggrieved must apply.*
- “ 2575. *Examination of persons assessed.*
- “ 2576. *Witness may be subpoenaed.*
- “ 2577. *Assessor must be present.*
- “ 2578. *Abstract of incumbrances must be furnished by county clerk.*
- “ 2579. *Equalization of assessment on mortgages.*
- “ 2580. *County commissioners to use records in equalizing.*
- “ 2581. *Board may direct assessor to assess in certain instances.*
- “ 2582. *County clerk must keep record of proceedings and make oath.*

2572. (§ 3780.) *County commissioners, when to equalize assessment.*—The board of county commissioners is the county board of equalization and must meet on the third Monday of July in each year, to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the second Monday in August.

Danforth v. Livingston, 23 Mont. 558; Matador L. Co. v. Custer Co., 28 59 Pac. 916. Mont. 287; 72 Pac. 662.

2573. (§ 3781.) *Board empowered to equalize assessments.*—The board has power, after giving notice in such manner as it may, by rule, prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value of such property in money.

M. O. P. Co. v. Maher, 32 Mont. 486; Oakland v. Southern P. Co., 131 Cal. 81 Pac. 14. 228; 63 Pac. 371.

2574. (§ 3782.) *The person aggrieved must apply.*—No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made.

Barrett v. Shannon, 19 Mont. 397; 48 Pac. 746. In an action to recover taxes paid to the county treasurer, claimed to be unlawfully assessed, the complaint must allege that the application referred to in this section was filed.

2575. (§ 3783.) *Examination of persons assessed.*—Before the board grants the application, or makes any reduction applied for, it must examine, on oath, the person or the agent making the application, touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

2576. (§ 3784.) *Witnesses may be subpoenaed.*—Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as, in its discretion, it may deem proper.

2577. (§ 3785.) *Assessor must be present.*—During the session of the board the assessor and any deputy whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the board.

Danforth v. Livingston, 23 Mont. 562; 59 Pac. 917. *Oakland v. Southern P. Co.*, 131 Cal. 228; 63 Pac. 371.

2578. (§ 3786.) *Abstract of incumbrances must be furnished by county clerk.*—To assist the assessor in the performance of his duties, the county clerk must annually transmit to the assessor, on or before the first Monday in March, a complete abstract of all mortgages, deeds of trust, contracts and other obligations by which any debt is secured, remaining unsatisfied on the records of his office, not barred by the statute of limitation, at 12 o'clock meridian, on the first Monday in March of said year. Such abstract must be written under appropriate headings, to embrace all information requisite for the assessor, in a book or books to be furnished by the board of county commissioners upon the requisition of the assessor. If any such list be found to contain any instrument relating to lands situated in more than one county, it is the duty of the assessor to transmit to the state board of equalization all information relating thereto.

Holland v. Commissioners, 15 Mont. 460; 39 Pac. 575. *Oakland v. Southern P. Co.*, 131 Cal. 228; 63 Pac. 371.

2579. (§ 3787.) *Equalization of assessment on mortgages.*—It is the duty of the state board of equalization to attach an apportionment of valuation of such instrument to be assessed in each county, and the board must transmit to the assessor of each county mentioned as affected in said instrument a statement

of valuation of assessment to be levied against said instrument in each county. The valuation so set by said state board is final, and the assessor must accept said valuation and charge said assessment upon said instrument accordingly. If the said list contain any instrument mortgaging or pledging two or more subdivisions of land, or land assessed in two or more subdivisions, in the same county, district, or city, the assessor must apportion the amount of assessment to be deducted from each subdivision on account of assessment against said instrument. When partial payments have been made on a debt, secured by mortgage or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March.

2580. (§ 3788.) *County commissioners to use records in equalizing.*—The board of county commissioners must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the county clerk.

2581. (§ 3789.) *Board may direct assessor to assess in certain instances.*—During the session of the board of county commissioners it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number or quantity of property when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries) when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the postoffice, postpaid, and addressed to the person interested, at least ten days before action is taken, of the day fixed when the matter will be investigated.

Cosier v. McMillan, 22 Mont. 490; 56 Pac. 967. Personal property on Indian reservations, in which the Indians are not interested, is subject to taxation by the state. The stock in trade of an Indian post trader is not exempt from county and state taxation. Irregularity of a board of equalization in placing a value on the property of a taxpayer, instead of requiring the assessor to do so, was waived by the tax payer, who, with notice thereof, appeared before the board and claimed that the property was not subject to taxation and made no objection to the irregularity.

Western Ranches v. Custer Co., 28 Mont. 281; 72 Pac. 281. The notice of ten days required by this section is juris-

ditional, and failure to give this notice is not waived by the taxpayer who subsequently appears and secures a reduction of the increased assessment.

Matador Co. v. Custer Co., 28 Mont. 287; 72 Pac. 662. In 1896 the functions of the board of equalization expired on the tenth day of August, and the notice required by this section mailed on the eighth day of August, notifying the taxpayer on the eighth day of September following, was void.

M. O. P. Co. v. Maher, 32 Mont. 486; 81 Pac. 14. This case follows the cases cited under this section. The county treasurer will not be enjoined from selling property to collect a tax, unless the owner pays the tax admitted to be due.

2582. (§ 3790.) *County clerk must keep record of proceedings and make oath.*—The county clerk must record, in a book to be kept for that purpose, all changes, corrections and orders

made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board, and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: "I,, do swear that, as county clerk of. county, I have kept correct minutes of all the acts of the board of county commissioners touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized."

Savings Society v. San Francisco, 146 Cal. 677; 80 Pac. 1086.

ARTICLE II.

STATE BOARD OF EQUALIZATION.

- Section 2583. Who constitute the board.*
 " 2584. *Powers and duties.*
 " 2585. *Equalization of assessment.*
 " 2586. *Statement, when county clerk fails.*
 " 2587. *Statement of changes sent to county clerk.*
 " 2588. *Must notify board of county commissioners.*
 " 2589. *Penalty for refusing to obey rules of board.*
 " 2590. *Assessor to be prosecuted, when.*
 " 2591. *Who may administer oaths.*
 " 2592. *Expenses to be allowed.*

2583. (§ 3800.) *Who constitute the board.*—The governor, secretary of state, state treasurer, state auditor and attorney general constitute a state board of equalization, of which the governor is president and the secretary of state the secretary.

State v. Fortune, 24 Mont. 157; 60 Pac. 1087. State board of equalization with power Statutes cannot clothe the denied to it by the constitution.

2584. (§ 3801.) *Powers and duties.*—The powers and duties of the state board of equalization are as follows:

1. To prescribe rules for its own government and for the transaction of its business.
2. To prescribe rules and regulations not in conflict with the constitution and the laws of the state, to govern county commissioners when equalizing, and assessors when assessing.
3. To make out and prepare, and enforce the use of forms in relation to the assessment of property.
4. To hold meetings at the state capitol, as prescribed by its rules, and such special meetings as the president may direct.
5. To annually assess the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this state, at their actual value, at the first Monday in March, at twelve o'clock m., and to apportion such assessment

to the counties in which such railroads are located, in proportion to the number of miles of railroad laid in such counties, in the manner provided for in § 2556 (3737) of this code.

6. To equalize the assessment of each mortgage, deed of trust, contract or other obligation by which a debt is secured, and which affects property situated in two or more counties, and to apportion the assessment thereof to each of said counties.

7. To transmit to the county clerk of each county its apportionment of the assessments made by such board upon the franchises, roadways, roadbeds, rails and rolling stock of railroads; and also its apportionment of the assessments made by such board upon mortgages, deeds of trust, contracts and other obligations by which debts are secured, in the manner provided for in § 2556 (3737) of this code.

8. To meet at the state capitol on the fourth Monday in July, and remain in session from day to day (Sundays excepted), until the third Monday in August, and later if the business of the board requires.

9. At such meetings to equalize the valuation of the taxable property of the several counties in this state for the purpose of taxation; and to that end, under such rules of notice to the county clerk of the county affected thereby as it may prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein, and make the assessment conform to the true value in money of the property assessed.

10. To visit as a board, or by the individual members thereof, whenever deemed necessary, the several counties of the state, for the purpose of inspecting the property and learning the value thereof.

11. To call before it, or any member thereof, on such visit, any officers of the county, and to require them to produce any public records in their custody.

12. To issue subpoenas for the attendance of witnesses or production of books before the board, or any member thereof; which subpoenas must be signed by a member of the board, and may be served by any person.

13. To report biennially to the legislative assembly a statement showing:

First—The acreage of each county in the state that is assessed.

Second—The amount assessed per acre.

Third—The aggregate value of all town and city lots.

Fourth—The aggregate value of all real estate and mining claims, stating each separately in the state.

Fifth—The kinds of personal property in each county, and the value of each kind.

Sixth—The aggregate value of all personal property in the state.

Seventh—Any information relative to the assessment of property and the collection of revenue.

Eighth—Such further suggestion as it deems proper.

14. To keep a record of all its proceedings.

15. To appoint a clerk, who must assist the secretary of the board and perform such other duties as the board may require, and who holds his office during the pleasure of the board.

Miller v. Kern Co., 137 Cal. 523; 70 Pac. 549.

2585. (§ 3802.) *Equalization of assessment.*—When, after a general investigation by the board, the property is found to be assessed above or below its full cash value, the board may, without notice, so determine, and must add to or deduct from the valuation:

1. The real estate.

2. Improvements upon such real estate.

3. The personal property, except money, such per centum respectively as is sufficient to raise or reduce it to its full cash value.

2586. (§ 3803.) *Statement, when county clerk fails.*—If the county clerk fails to forward to the state board of equalization the statement provided for in § 2605 (3841), the board must obtain the statement, or so much thereof as is necessary, from other reliable sources.

2587. (§ 3804.) *Statement of changes sent to county clerk.*—When the equalization among the several counties is completed, the secretary of the board must transmit to each county clerk a statement of the changes made by the board in the assessment book of the county, or any assessment contained therein, and of the per centum to be added to or deducted from the valuation of such statement, which is prima facie evidence of the regularity of all proceedings of the board, resulting in the action which is the subject matter of the statement.

Davis v. Pacific L. Co., 137 Cal. 251; 70 Pac. 15.

2588. (§ 3805.) *Must notify board of county commissioners.*—Between the first and third Mondays in August of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing twelve per cent. for delinquencies in and costs of collection of taxes, must be sufficient to raise the specific amount of revenues to be raised by the legislative assembly for state purposes. The board must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

2589. (§ 3806.) *Penalty for refusing to obey rules of board.*—Every person served with a subpoena who fails or neglects with-

out just excuse, to obey it, and every officer who refuses to obey the rules and regulations prescribed by the board, or to perform the duties prescribed therein, forfeits to the state five hundred dollars, to be recovered by action in the name of the state, which action may be commenced and tried in any county of the state.

2590. (§ 3807.) *Assessor to be prosecuted, when.*—When ever the state board of equalization is satisfied that the assessor or deputy assessor of any county has knowingly, fraudulently, or corruptly assessed any property below its actual cash value, it must immediately inform the county attorney of such county in writing of that fact, with a request that such assessor or deputy assessor be prosecuted, and the county attorney must at once comply with such request.

2591. (§ 3808.) *Who may administer oaths.*—The clerk or any member of the board may administer and certify oaths.

2592. (§ 3809.) *Expenses to be allowed.*—Each member of the board is entitled to repayment of his actual expenses incurred by him while traveling in the discharge of his duties, and all money paid out for necessary clerical work, stationery and postage stamps, to be audited and allowed by the state board of examiners.

CHAPTER VI.

LEVY OF TAXES.

Section 2593. *The levy.*

“ 2594. *Fiscal year.*

“ 2595. *Official reports, when to be made.*

“ 2596. *Construction of act.*

“ 2597. *Rate of taxation fixed by state board.*

“ 2598. *Rate of county fixed by board of county commissioners.*

“ 2599. *When county commissioners fail to levy.*

“ 2600. *Tax operates as a judgment or lien.*

“ 2601. *Tax on personalty a lien on real.*

“ 2602. *Tax upon real and tax upon personal a lien on both.*

“ 2603. *Tax for school purposes.*

2593. (§ 3820.) *The levy.*—There must be levied at each session of the legislative assembly upon all property in the the state liable to taxation a sufficient sum to realize the amount necessary to meet the appropriations made for the two succeeding fiscal years, and for the payment of deficiencies, if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately and must not exceed two and one-half mills on each dollar of valuation. The fiscal year commences on the first day of July.

2594. (§ 3821.) *Fiscal year.*—The fiscal year for state and county purposes commences on the first day of December of each year, and ends on the last day of November of each year. [*Act approved March 13, 1895.*]

2595. (§ 3822.) *Official reports, when to be made.*—All state and county officers who are required to make and file reports in accordance with the provisions of the constitution, the general laws of the state and the codes, shall prepare and file such reports on the tenth day of December of each year; which reports shall include the transaction of such board or officer for the fiscal year. [*Act approved March 13, 1895.*]

2596. (§ 3823.) *Construction of act.*—This act should be construed as amendatory to any and all acts heretofore enacted otherwise fixing and designating the commencement of the fiscal year of state and counties, and as well fixing the time for making and filing reports by state and county officers, and all acts and parts of acts in conflict with this act are hereby modified in form with the provisions of this act. [*Act approved March 13, 1895.*]

2597. (§ 3824.) *Rate of taxation fixed by state board.*—The state board of equalization must for state purposes for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent. for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

2598. (§ 3825.) *Rate of county fixed by board of county commissioners.*—The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county.

2599. (§ 3826.) *When county commissioners fail to levy.*—The action of the state board of equalization in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

2600. (§ 3827.) *Tax operates as a judgment or lien.*—Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

State v. Johnson, 16 Mont. 573; 41 Pac. 708. There is no lien on personal property for taxes when the owner does not own real property, and the county treasurer will be enjoined from selling

such personal property in the hands of an innocent purchaser.

People v. C. P. Co., 105 Cal. 595; 38 Pac. 905.

2601. (§ 3828.) *Tax on personalty a lien on real.*—Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m., of the first Monday in March in each year.

Walsh v. Croft, 27 Mont. 408; 71 Pac. 409. People v. Smith, 123 Cal. 76; 55 Pac. 765.

2602. (§ 3829.) *Tax upon real and tax upon personal a lien on both.*—Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

Walsh v. Croft, 27 Mont. 408; 71 Pac. 409. People v. Smith, 123 Cal. 76; 55 Pac. 765.

2603. *Tax for school purposes.*—There must be levied by the legislative assembly, at the time other state taxes are levied, a tax of such number of cents of each one hundred dollars value of taxable property in the state, as will produce a net sum equal to the amount reported to them by the state auditor, or as may be otherwise ascertained as being necessary to be raised by an ad valorem tax for school purposes; and the assessment and collection of said tax must be performed in the same manner, and at the same time, as other state taxes are assessed and collected.

CHAPTER VII.

DUTY OF COUNTY CLERK IN RELATION TO REVENUE.

Section 2604. *County clerk to enter total valuation.*

“ 2605. *County clerk to prepare duplicate statement.*

“ 2606. *Statement to be transmitted to state auditor and state board of equalization.*

“ 2607. *To follow directions of state board of equalization.*

“ 2608. *To compute and enter taxes and foot up total.*

“ 2609. *Delivery of duplicate assessment book to treasurer.*

“ 2610. *County clerk to keep original.*

“ 2611. *County treasurer charged with taxes levied.*

“ 2612. *County clerk to verify statements made by him.*

“ 2613. *To transfer from one treasurer to another.*

“ 2614. *Penalty for neglect of duty.*

“ 2615. *County commissioners may dispense with duplicate book.*

2604. (§ 3840.) *County clerk to enter total valuation.*—The county clerk, as soon as he receives the book, must proceed to add up the valuations, and enter the total valuation of each kind of

property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

2605. (§ 3841.) *County clerk to prepare duplicate statement.*—The county clerk must, on or before the second Monday in August of each year, prepare from the "Assessment Book" of such year, as corrected by the board of county commissioners, duplicate statements, showing in separate columns:

1. The total value of all property.
2. The value of real estate, including mining claims, stated separately.
3. The value of the improvements thereon.
4. The value of personal property, exclusive of money.
5. The amount of money.
6. The number of acres of land and the number of mining claims stated separately.

State v. Weston, 29 Mont. 130; 74 Pac. 417.

2606. (§ 3842.) *Statement to be transmitted to state auditor and state board of equalization.*—The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state board of equalization.

State v. Fortune, 24 Mont. 155; 60 Pac. 1086. State v. Weston, 29 Mont. 130; 74 Pac. 417.

2607. (§ 3843.) *To follow directions of state board of equalization.*—As soon as the county clerk receives from the state board of equalization a statement of the changes made by the board in the assessment book of the county, or in any assessment contained therein, he must make the corresponding changes in the assessment book, by entering the same in a column provided with a proper heading in the assessment book, counting any fractional sum, when more than fifty cents, as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must, in all cases, disregard any action of the board of county commissioners which is prohibited by § 2515 (3705), of this code.

State v. Weston, 29 Mont. 130; 74 Pac. 417. Davis v. Pacific Co., 137 Cal. 252; State v. Weston, 29 Mont. 130; 74 Pac. 15.

2608. (§ 3844.) *To compute and enter taxes and foot up total.*—The county clerk must then compute and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the column showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the state board of equalization.

Allen v. McKay, 120 Cal. 341; 52 Pac. 828.

2609. (§ 3845.) *Delivery of duplicate assessment book to treasurer.*—On or before the first Monday of October, he must

deliver a copy of the corrected assessment book, to be styled "Duplicate Assessment Book," to the county treasurer with an affidavit attached thereto, and by him subscribed as follows: "I, _____, county clerk of the county of _____, do swear that I received the assessment book of the taxable property of the county from the assessor, with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state board of equalization; that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and that the copy to which this affidavit is affixed is a full, true and correct copy thereof, made in the manner prescribed by law."

State v. Weston, 29 Mont. 125; 74 Pac. 415. The affidavit must cover all the facts showing that the county clerk has done his duty in taking the basis

furnished by the assessor in entering the authorized corrections and extensions, and in making the copy furnished by him such as is required by law.

2610. (§ 3846.) *County clerk to keep original.*—The original assessment book must remain in the office of the county clerk.

2611. (§ 3847.) *County treasurer charged with taxes levied.*—On delivering the "Duplicate Assessment Book," to the county treasurer, the county clerk must charge the treasurer with the full amount of taxes levied.

2612. (§ 3848.) *County clerk to verify statements made by him.*—The county clerk must verify, by his affidavit attached thereto, all statements made by him under the provisions of this title.

2613. (§ 3849.) *To transfer from one treasurer to another.*—The county clerk, if the "Duplicate Assessment Book" or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the tax book.

2614. (§ 3950.) *Penalty for neglect of duty.*—If the county clerk fails or neglects to perform the duties prescribed by § § 2584 (3801) and 2585 (3802) of this code, he forfeits to the state five hundred dollars, to be recovered by action in the name of the state.

2615. (§ 3851.) *County commissioners may dispense with duplicate book.*—The board of county commissioners of any county may, in its discretion, dispense with the making or use of any duplicate assessment book mentioned in any part of this code; and in all cases where said duplicate assessment book is referred to, it is lawful to use and consider the original assessment book in all the requirements of every part of this code referring to the same, and all affidavits or other statements in reference to said duplicate assessment book must be substantially worded to conform to the use of the original assessment book.

State v. Weston, 29 Mont. 125; 74 Pac. 415. This section has no application to the duplicate prepared for the use of city treasurers. The county commissioners under this section dispensed with

the duplicate assessment book, but this does not prevent the county clerk from furnishing a duplicate for a city, though the original assessment book is to be used by the county treasurer.

CHAPTER VIII.

COLLECTION OF PROPERTY TAXES.

- Section 2616. *Treasurer to publish notice of delinquency.*
“ 2617. *Manner of publication of notice.*
“ 2618. *Treasurer to note date of payment.*
“ 2619. *Receipt to be given.*
“ 2620. *Payment of taxes of decedents, how enforced.*
“ 2621. *Settlement of treasurer with county clerk.*
“ 2622. *When taxes become delinquent, penalty.*
“ 2623. *Comparison of original and duplicate assessment books by treasurer and county clerk.*
“ 2624. *When delinquent list must be completed.*
“ 2625. *All matters on assessment book to be set down in numerical or alphabetical order.*
“ 2626. *Credit to be given to treasurer on final settlement, etc.*
“ 2627. *Treasurer charged with delinquent taxes and ten per cent. additional.*
“ 2628. *Statement to be transmitted to state auditor by county clerk.*
“ 2629. *Publication of delinquent tax list.*
“ 2630. *Notice of sale appended to delinquent list.*
“ 2631. *Manner of making publication.*
“ 2632. *Time and place of sale to be designated.*
“ 2633. *Sale, when and where to take place.*
“ 2634. *Copy of publication and affidavit to be filed with the county clerk.*
“ 2635. *Additional sum collected to defray costs.*
“ 2636. *Manner of conducting sale.*
“ 2637. *Postponement.*
“ 2638. *Designations of portions to be sold. Purchase of least quantity or interest. Sale to county.*
“ 2639. *Re-sale when purchaser does not make payment.*
“ 2640. *Bid of person once refusing to make payment not to be received.*
“ 2641. *Treasurer to give purchaser a duplicate certificate of sale.*
“ 2642. *Signature of certificates of sale, and disposition of copies.*
“ 2643. *Treasurer to enter in a book description of land sold.*
“ 2644. *Lien of state when vests in purchaser; how alone divested.*

- Section 2645. *Time of redemption of property.*
- “ 2646. *Redemption, in what money made; crediting amount and paying it over.*
- “ 2647. *Treasurer's report of persons entitled to redemption and amount due each.*
- “ 2648. *Clerk to file and enter certificate of sale.*
- “ 2649. *When property is redeemed, clerk to note it in book.*
- “ 2650. *Treasurer's deed when property is not redeemed in time; charges for making and acknowledgment.*
- “ 2651. *Notice of application for tax deeds.*
- “ 2652. *No deed to issue under certain circumstances.*
- “ 2653. *Recitals in deed, primary evidence of what.*
- “ 2654. *Deed conclusive evidence of what.*
- “ 2655. *Title conveyed by deed, deeds to state record and effect of.*
- “ 2656. *Assessment books, delinquent books, etc., prima facie evidence of what.*
- “ 2657. *Seizure and sale of personal property for taxes.*
- “ 2658. *Manner of conducting sale, etc.*
- “ 2659. *Sale must be made after notice.*
- “ 2660. *Treasurer's charges and mileage for sale or seizure.*
- “ 2661. *Title to such property vests in purchaser on payment, etc.*
- “ 2662. *Disposition of excess of proceeds over taxes, percentage and costs.*
- “ 2663. *Unsold portion to remain at risk of owner.*
- “ 2664. *Comparison of delinquent list with unpaid assessment.*
- “ 2665. *Oath administered to treasurer.*
- “ 2666. *Final settlement of treasurer with clerk.*
- “ 2667. *Treasurer's affidavit indorsed on list.*
- “ 2668. *Rate of interest on delinquent taxes.*
- “ 2669. *Taxes, etc., illegally collected, to be refunded.*
- “ 2670. *When land assessed more than once.*
- “ 2671. *Land irregularly assessed, etc., not to be sold.*
- “ 2672. *What mistakes do not affect sale of property for taxes.*
- “ 2673. *Collection of taxes from persons assessed, but removed to another county.*
- “ 2674. *Evidence on trial of suit for such taxes.*
- “ 2675. *Allowance and payment of expense of such proceeding.*

Section 2676. Protest against sale requisite when assessment void in part, to invalidate sale or grant thereunder.

“ 2677. *Duty of treasurer on delivery of such protest.*

“ 2678. *Assessment of property purchased by county, and adjournment of sale thereof.*

“ 2679. *No sale unless directed by board of county commissioners.*

“ 2680. *Conditions of redemption of property sold to county.*

“ 2681. *Distribution of such redemption moneys. Accounts, etc.*

“ 2682. *County commissioners to sell unredeemed property.*

2616. *Treasurer to publish notice of delinquency.*—Within ten days after the receipt of the “Duplicate Assessment Book,” the County Treasurer must publish a notice specifying:

I. That taxes will be delinquent on the 30th day of November next thereafter, at 6 o'clock P. M., and that unless paid prior thereto ten per cent will be added to the amount thereof.

II. The time and place at which payment of taxes may be made. [*Act approved March 7th, 1899.*] (6th Sess. 97-8.)

Note.—This section is not enumerated in title of act.

2617. (§ 3861.) *Manner of publication of notice.*—The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities.

2618. (§ 3862.) *Treasurer to note date of payment.*—The county treasurer must mark the date of the payment of any tax in the assessment book, opposite the name of the person paying.

2619. (§ 3863.) *Receipt to be given.*—He must give a receipt to the person paying any tax specifying the amount of the assessment and the tax paid, with a description of the property assessed.

2620. (§ 3864.) *Payment of taxes of decedents, how enforced.*—The district court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

Estate of Mahoney, 133 Cal. 184; 65 Pac. 389.

2621. (§ 3865.) *Settlement of treasurer with county clerk.*—On the first Monday in March, June and September and the second Monday in December, the county treasurer

must settle with the board of county commissioners for all moneys collected for the state or county, and on the said day must deliver to and file in the office of the county clerk a statement under oath, showing:

1. An account of all his transactions and receipts since his last settlement.

2. That all money collected by him is in the county treasury.

Meyer v. Widber, 126 Cal. 257; 58 Pac. 532.

2622. *When taxes become delinquent. Penalty.*—On the thirtieth day of November, of each year, at six o'clock P. M., all unpaid taxes are delinquent, and thereafter the County Treasurer must collect for the use of the county an addition of ten per cent. [Act approved March 7th, 1899, § 2.] (6th Sess. 98.)

2623. (§ 3867.) *Comparison of original and duplicate assessment books by treasurer and county clerk.*—On the third Monday of December of each year the county treasurer must attend at the office of the county clerk with the duplicate assessment book, and carefully compare the duplicate with the original assessment book, and every item marked "paid" in the former must be marked "paid" in the latter.

People v. Weineke, 122 Cal. 538; 55 Pac. 579.

2624. (§ 3868.) *When delinquent list must be completed.*—The county treasurer must, at the time specified in the preceding section, deliver to the county clerk a complete "delinquent list" of all persons and property then owing taxes.

2625. (§ 3869.) *All matters on assessment book to be set down in numerical or alphabetical order.*—In the list so delivered must be set down in numerical or alphabetical order, all matters and things contained in the assessment book, and relating to delinquent persons or property.

Rollins v. Woodman, 117 Cal. 518; 49 Pac. 555.

2626. (§ 3870.) *Credit to be given to treasurer on final statement, etc.*—The county clerk must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him an immediate account for any existing deficiency.

2627. (§ 3871.) *Treasurer charged with delinquent taxes and ten per cent additional.*—After settlement with the county treasurer, as prescribed in the preceding section, the county clerk must charge the treasurer then acting, with the amount of taxes due on the delinquent tax list, with the ten per cent. added thereto, and within three days thereafter deliver the list, duly certified, to such county treasurer.

2628. (§ 3872.) *Statement to be transmitted to state auditor by county clerk.*—Within ten days after the final settlement, the county clerk must transmit, by mail, a statement to the state auditor, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

2629. *Publication of delinquent tax list.*—On or before the last Monday of each year, the county treasurer must publish the delinquent real estate and personal tax list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes and costs due, opposite each name and description, with the taxes due on personal property added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person; and he shall likewise publish, as a part thereof and attached thereto, but grouped together and following the foregoing, all personal taxes, due and delinquent and owing from persons who are assessed with personal property alone and no real estate, and the amount of delinquent tax due from each person owing the same, placed opposite to the name of each such person. The expenses of such publication shall be a charge against the county. [*Act approved February 28th, 1901.*] (7th Sess. 142.)

Ellis v. Witmer, 134 Cal. 255; 66 Pac. 301.

2630. (§ 3874.) *Notice of sale appended to delinquent list.*—The county treasurer must publish with the delinquent tax list a notice that unless the taxes delinquent, together with the costs and percentage, are paid, the real property upon which such taxes are a lien will be sold at public auction.

Conklin v. Cullen, 29 Mont. 44; 74 Pac. 74. The county treasurer must publish the delinquent tax list notice in the news-

paper having the contract for the county printing.

Davis v. Pacific Co., 137 Cal. 250; 66 Pac. 301.

2631. (§ 3875.) *Manner of making publication.*—The publication must be made once a week for three successive weeks in such newspaper published in the county as the board of county commissioners directs. If there is no newspaper published in the county, then by posting a copy of the list in three public places.

Conklin v. Cullen, 29 Mont. 43; 74 Pac. 73. The publication required by this section was published December 30, 1895, January 6, 1896, and January 13, 1896, and the sale took place January 27, 1896. The publication was for a sufficient time.

2632. (§ 3876.) *Time and place of sale to be designated.*—The publication must designate the time and place of sale.

2633. (§ 3877.) *Sale, when and where to take place.*—The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the county treasurer's office. [*Act approved March 19, 1895.*]

Conkling v. Cullen, 29 Mont. 44; 74 Pac. 75.

Ellis v. Witmer, 134 Cal. 255; 66 Pac. 301.

2634. (§ 3878.) *Copy of publication and affidavit to be filed with the county clerk.*—The county treasurer, as soon as he has made the publication required by the preceding sections, must file with the county clerk a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein.

Davis v. Pacific Co., 137 Cal. 249; 70 Pac. 15.

2635. (§ 3879.) *Additional sum collected to defray costs.*—The county treasurer must collect, in addition to the taxes due on the delinquent list and ten per centum added thereto, fifty cents on each lot, piece or tract of land separately assessed, and on each assessment of personal property, which must be paid to the county to pay the cost of such publication.

2636. (§ 3880.) *Manner of conducting sale.*—On the day fixed for sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of ten o'clock a. m. and three p. m., must commence the sale of the property advertised, commencing at the head of the list, and continuing in alphabetical or numerical order of lots and blocks until completed.

2637. (§ 3881.) *Postponement.*—He may postpone the day of commencing the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

2638. (§ 3882.) *Designations of portions to be sold. Purchase of least quantity or interest. Sale to County.*—The owner or person in possession of any real estate offered for sale for taxes due thereon, may designate, in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the treasurer may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the portion of the interest, and pay the taxes and costs due, including fifty cents to the treasurer for the duplicate certificate of sale, is the purchaser. But in case there is no purchaser in good faith for the same, as provided in this chapter, on the first day that the property is offered for sale, then when the property is offered thereafter for sale and there is no purchaser in good faith for the same, the whole amount of the property assessed must be struck off to the county as the purchaser, and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the

county is a purchaser; and in such case the county treasurer must make an entry, "Sold to the county," on the duplicate assessment book opposite the tax, and he must be credited with the amount thereof in the settlement.

Hayes v. Ducasse, 119 Cal. 684; 52 Pac. 121.

2639. (§ 3883.) *Re-sale when purchaser does not make payment.*—If the purchaser does not pay the tax and costs before ten o'clock p. m. of the following day, the property, on the next sale day, before the regular sale, must be re-sold for taxes and costs.

Hayes v. Los Angeles, 99 Cal. 81; 33 Pac. 766.

2640. (§ 3884.) *Bid of person once refusing to make payment not to be received.*—The bid of any person refusing to make the payment for the property purchased by him must not be received on the sale of any property advertised in the delinquent tax list of that year.

2641. (§ 3885.) *Treasurer to give purchaser a duplicate certificate of sale.*—After receiving the amount of taxes and costs, the treasurer must make out in duplicate, a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

Rollins v. Woodman, 117 Cal. 519; 49 Pac. 455.

2642. (§ 3886.) *Signature of certificate of sale, and disposition of copies.*—The certificate must be signed by the county treasurer and one copy delivered to the purchaser, and the other filed in the office of the county clerk.

2643. (§ 3887.) *Treasurer to enter in a book description of land sold.*—The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate. Such book must be open to public inspection without fee during office hours when not in actual use.

2644. (§ 3888.) *Lien of state when vests in purchaser; how alone divested.*—On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and one per cent. additional for each month that elapses from the date of the sale until redeemed. [Act approved March 19, 1895.]

Klumpke v. Baker, 131 Cal. 84; 63 Pac. 137.

2645. (§ 3889.) *Time of redemption of property.*—A redemption of the property sold may be made by the owner or any

party interested within thirty-six months from the date of the purchase, or at any time prior to the giving of the notice and the application for a deed, as provided for in this act. [*Act approved March 19, 1895.*]

2646. (§ 3890.) *Redemption, in what money made; crediting amount and paying it over.*—Redemption must be made in lawful money and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees.

2647. (§ 3891.) *Treasurer's report of persons entitled to redemption and amount due each.*—In each report the treasurer makes to the board of county commissioners he must name the persons entitled to redemption money, and the amount due to each.

2648. (§ 3892.) *Clerk to file and enter certificate of sale.*—On receiving the certificate of sale the county clerk must file it, and make an entry in a book similar to that required of the treasurer.

2649. (§ 3893.) *When property is redeemed, clerk to note it in book.*—On the presentation of the receipt of the person named in the certificate, or of the county treasurer for his use, of the total amount of redemption money, the county clerk must mark the word "Redeemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

2650. (§ 3894.) *Treasurer's deed when property is not redeemed in time; charges for making and acknowledgment.*—If the property is not redeemed in the time allowed by law for its redemption, the county treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The county treasurer is entitled to receive from the purchaser, for the use of the county, three dollars for making such deed. No charge must be made by the county treasurer for the making of any such deed where the county is the purchaser; and the acknowledgment of all such deeds, as provided in § 2639 (3882), must be taken by the county clerk free of charge.

2651. *Notice of application for tax deeds.*—The purchaser of property sold for delinquent taxes or his assignee, must, thirty days previous to the expiration of the time for redemption, or thirty days before he applies for a deed, serve upon the owner of the property purchased, if known, and upon the person occupying the property, if said property is occupied, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold.

the amount for which it was sold, the amount due, and the time when the right of redemption will expire, or when the purchaser will apply for a deed, and the owner of the property has the right of redemption indefinitely until such notice has been given and said deed applied for, upon the payment of fees, percentages, penalties and costs required by law. In case of an unoccupied property, or a mining claim, such notice must be posted in a conspicuous place upon the property, and personally served upon all owners thereof residing in the county where the property is situated, at least thirty days before the expiration of the time for redemption, or thirty days before the purchaser applies for such tax deed. [*Act approved March 3, 1905.*] (9th Sess. Chap. 79.)

2652. (§ 3896.) *No deed to issue under certain circumstances.*—No deed of the property sold at a delinquent tax sale must be issued by the county treasurer, or any other officer, to the purchaser of the property, until after such purchaser shall have filed with the treasurer, or other officer, an affidavit showing that the notice hereinbefore required to be given has been given as herein required, which said affidavit must be filed by the treasurer, as other files, papers and records kept by him in his office. Such purchaser is entitled to receive the sum of three dollars for the service of said notice and the making of said affidavit; which sum of three dollars must be paid by the redemptioner at the same time and in the same manner as other costs, percentages, penalties, and fees are paid.

2653. (§ 3897.) *Recitals in deed, primary evidence of what.*—The matters recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved, is prima facie evidence that:

1. The property was assessed as required by law.
2. The property was equalized as required by law.
3. The taxes were levied in accordance with law.
4. The taxes were not paid.
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer.
6. The property was not redeemed.
7. The person who executed the deed was the proper officer.
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

Carpenter v. Shinnars, 108 Cal. 363; 41 Pac. 473.

2654. (§ 3898.) *Deed conclusive evidence of what.*—Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed.

County Bank v. Jack, 148 Cal. 443; 83 Pac. 705.

2655. (§ 3899.) *Title conveyed by deed.*—The deed conveys to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States, or this state, in which case it is prima facie evidence of the right of possession, accrued as of the date of the expiration of such period for redemption.

California Co. v. Weis, 118 Cal. 494; 50 Pac. 697.

2656. (§ 3900.) *Assessment books, delinquent books, etc., prima facie evidence of what.*—The assessment book, duplicate assessment book, or delinquent list, or a copy thereof certified by the county clerk, showing unpaid taxes against any person or property is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

2657. (§ 3901.) *Seizure and sale of personal property for taxes.*—The treasurer may, after the first Monday in February in each year, in each of the counties of this state, collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent.

2658. (§ 3902.) *Manner of conducting sale, etc.*—The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage and costs.

2659. (§ 3903.) *Sale must be made after notice.*—The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

2660. (§ 3904.) *Treasurer's charges and mileage for sale or seizure.*—For seizing or selling personal property, the treasurer may charge in each case the sum of three dollars, for the use of the county, and the same mileage as is allowed by law to the sheriff of the county, and reasonable expenses for seizing, handling, keeping or caring for any property so seized or sold. [Act approved March 15, 1895.]

2661. (§ 3905.) *Title to such property vests in purchaser on payment.*—On the payment of the price bid for any property sold the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

2662. (§ 3906.) *Disposition of excess of proceeds over taxes, percentage and costs.*—All excess over the taxes, per cent., and costs of the proceeds of any such sale must be returned to the owner of the property sold, and until claimed must be deposited

in the county treasury, subject to the order of the owner, heirs, or assigns.

2663. (§ 3907.) *Unsold portion to remain at risk of owner.*—The unsold portion of any property may be left at the place of sale at the risk of the owner.

2664. (§ 3908.) *Comparison of delinquent list with unpaid assessment.*—The county treasurer must annually, on the third Monday of February, attend at the office of the county clerk with the delinquent list, and the county clerk must then carefully compare the lists with the assessments of persons and property not marked "Paid" on the assessment book, and when taxes have been paid he must note the fact in the appropriate column in the assessment book.

2665. (§ 3909.) *Oath administered to treasurer.*—The county clerk must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid, has been credited in the list with such payment.

2666. (§ 3910.) *Final settlement of treasurer with clerk.*—The county clerk must then foot up the amount of taxes remaining unpaid, and credit the treasurer with the amount, and have a final settlement with him; and the delinquent list must remain in the county clerk's office.

2667. (§ 3911.) *Treasurer's affidavit indorsed on list.*—At the time mentioned in § 2664 (3908), the treasurer must make an affidavit, indorsed on the list, that the taxes not marked "Paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the sum whereof to collect them.

2668. (§ 3912.) *Rate of interest on delinquent taxes.*—Interest at the rate of one per cent. per month must be collected on such delinquent taxes from the time they were first delinquent until paid.

2669. (§ 3913.) *Taxes, etc., illegally collected, to be refunded.*—Any taxes, per centum and costs, paid more than once or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer, and the state's portion of such tax, percentage and costs, must be refunded to the county, and the state auditor must draw his warrant therefor in favor of the county.

Hayes v. Los Angeles, 99 Cal. 78; 33 Pac. 766.

2670. (§ 3914.) *When land assessed more than once.*—When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due, and make return of the facts, under affidavit, to the county clerk.

2671. (§ 3915.) *Land irregularly assessed, etc., not to be sold.*—If the treasurer discovers before the sale that on account of irregular assessment, or of any other assessment, any land ought not to be sold, he must not offer the land for sale; and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

2672. (§ 3916.) *What mistakes do not affect sale of property for taxes.*—When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1. The listing of lands to the wrong person is no ground for restraining the sale of land for the nonpayment

of taxes.

Birney v. Warren, 28 Mont. 67; 72 Pac. 294. This section does not apply to personal property.

2673. (§ 3917.) *Collection of taxes from persons assessed, but removed to another county.*—If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

2674. (§ 3918.) *Evidence on trial of suit for such taxes.*—On the trial a certified copy of the assessment signed by the county clerk of the county where the same was made, with the affidavit of the treasurer thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list is prima facie evidence that such tax and the per centum are due, and entitles him to judgment, unless the defendant proves that the tax was paid.

2675. (§ 3919.) *Allowance and payment of expense of such proceeding.*—The treasurer and county clerk must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do exceed one-third of the amount of the tax collected.

2676. (§ 3920.) *Protest against sale requisite when assessment void in part, to invalidate sale or grant thereunder.*—When ever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale must not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, not less than six days before the time at which the property is advertised to be sold, delivers to the treasurer a protest in writing, signed by the owner or agent, specifying the portion of the tax which he claims to be invalid, and the ground upon which such claim is based.

2677. (§ 3921.) *Duty of treasurer on delivery of such protest.*—In case any owner of property advertised to be sold for delinquent taxes, at least six days before the time advertised for the sale to take place, delivers to the county treasurer his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part, and if in part only, for what portion, and in either specifying the grounds upon which such claim is founded, it is the duty of the treasurer either:

1. To sell the property assessed for the whole amount appearing upon the duplicate assessment book; or

2. Withdraw the property from sale, and report the case to the board of county commissioners for its direction in the premises; and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale.

2678. (§ 3922.) *Assessment of property purchased by county and adjournment of sale thereof.*—In case property assessed for taxes is purchased by the county, pursuant to provisions of § 2638 (3882), of this code, it must be assessed the next year for taxes in the same manner as if it had not been so purchased. But it must not be exposed for sale, and the sale thereof, under such assessment, must be adjourned until the time of redemption, under the previous sale, shall have expired.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1. The intention of the county treasurer to violate sections 3922 and 3923 of this code and expose for sale for delinquent taxes for 1898 part of

the lands purchased by the county at the tax sales of 1897, and yet unredeemed, does not entitle the owner of the equity of redemption to an injunction.

2679. (§ 3923.) *No sale unless directed by board of county commissioners.*—In case an assessment is made under the provisions of the next preceding section, and the lands are not redeemed from a previous sale had under § 2638 (3882), as provided by law, no sale must be had under the assessment authorized by the next preceding section unless directed by the board.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1.

2680. (§ 3924.) *Conditions of redemption of property sold to county.*—In case property is sold to the county as purchaser, pursuant to § 2638 (3882), of this code, and is subsequently assessed, pursuant to § 2678 (3922), of this code, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees and interest.

2681. (§ 3925.) *Distribution of such redemption moneys. Accounts, etc.*—Whenever property sold to the county pursuant to the provisions of this chapter is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows: The original tax and twenty per cent. paid in redemption must be apportioned between the state and county

in the same proportion that the state tax bears to the county tax, and the balance must be paid to the county. The county treasurer must keep an accurate account of all money paid in redemption of property sold to the county, and must on the first Monday of June in each year make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county treasurer any grant of property so sold for taxes the same shall be recorded, at the request of the county treasurer, free of charge by the county clerk, and shall be immediately reported by the county treasurer to the board of county commissioners.

2682. (§ 3926.) *County commissioners to sell unredeemed property.*—Whenever the county has become the purchaser of any real estate sold for delinquent taxes, and the same has not been redeemed by the person entitled so to do, and time for such redemption has expired, the board of county commissioners may at any time, by an order duly made and entered upon the minutes of its proceedings sell the same at public auction, and the chairman of the board is authorized to execute a deed therefor vesting in the purchaser all the title of the state and the county to the real estate so sold. The money arising from such sale must be paid into the county treasury, and the treasurer must settle for money so received as for other state and county money.

CHAPTER IX.

COLLECTION OF TAXES ON PERSONAL PROPERTY, WHEN NOT A LIEN ON REAL ESTATE.

Section 2683. Duty of assessor.

“ 2684. *Duty of treasurer.*

“ 2685. *Mode of conducting seizure and sale.*

“ 2686. *Rate of taxation. Where property taxable.*

“ 2687. *Return of excess where lower rate fixed for year of collection.*

“ 2688. *Collection of deficiency where higher rate is fixed.*

“ 2689. *Treasurer's record.*

“ 2690. *Assessor to note report of property.*

“ 2691. *Clerk to note excess or deficiencies in taxes paid.*

2683. *Duty of assessor.*—It shall be the duty of the Assessor, upon discovering any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately make a report to the Treasurer setting forth the nature, amount and assessed valuation of the said such personal property, where the

same is located and the name and address of the owner, claimant or other person in possession of the same. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 119.)

First Bank v. Province, 20 Mont. 374; 51 Pac. 821. Personal property owned by a National Bank is not subject to taxation under state laws.

Mutual L. I. Co. v. Martien, 27 Mont. 439; 71 Pac. 470. The legislature has no power to vest any other person than the treasurer with power to collect taxes.

N. W. I. Co. v. L. & C. Co., 28 Mont. 502; 72 Pac. 987.

Flowerree Co. v. L. & C. Co., 33 Mont. 33; 81 Pac. 398.

Section 3943 did not repeal section 3720 of the Political Code relative to the assessment of live stock.

2684. *Duty of treasurer.*—The County Treasurer must collect the taxes on all personal property and in the case provided for in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the Assessor, to notify the person or persons against whom the tax is assessed, that the amount of such tax is due and payable at the County Treasurer's office. At the time of receiving the Assessor's report, or at any time before November 1st, the Treasurer may collect the taxes by seizure and sale of any personal property owned by the person or persons against whom the tax is assessed. The County Treasurer and his sureties are liable on his official bond for all taxes on personal property within the county which through his wilful failure or neglect is uncollected. [*Act approved March 7, 1903.*] (8th Sess. Chap. 119.)

Note.—Section not enumerated in title.

2685. (§ 3942.) *Mode of conducting seizure and sale.*—The provisions of § 2658 (3902) to § 2663 (3907) inclusive, apply to such seizure and sale.

2686. *Rate of taxation. Where property taxable.*—The Treasurer shall be governed as to the amount of taxes to be collected by him on said personal property by the State and County rate of the previous year. Personal property which was in the State and subject to taxation on the first Monday in March of any year shall be taxable wherever and whenever found in any county in the State, whether the same be owned, claimed or possessed by the person owning, claiming or possessing it on the first day of March or not; *provided* that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes. [*Act approved March 7, 1903.*] (8th Sess. Chap. 119.)

2687. (§ 3944.) *Return of excess where lower rate fixed for year of collection.*—When the rate is fixed for the year in which such collection is made, then, if the sum in excess of the rate has been collected, such excess shall not be apportioned to the state, but the whole thereof shall remain in the county treasury, and must be repaid by the county treasurer to the person from whom the collection was made, or to his assignee, on demand therefor.

2688. (§ 3945.) *Collection of deficiency where higher rate is fixed.*—If a sum less than the rate fixed has been collected

the deficiency must be collected as other taxes on personal property are collected.

2689. *Treasurer's record.*—The Treasurer must on or before the first day of December of each year note on the assessment book opposite the name of each person from whom taxes have been collected by him in pursuance of such report of the Assessor the amount of taxes received and the date of the receipt thereof, or in case such taxes have not been collected by him the reason why such collection was not made. [Act approved March 7, 1903.] (8th Sess. Chap. 119.)

2690. *Assessor to note report of property.*—The Assessor must note on the assessment book opposite the names of each person owning, claiming or possessing such personal property which may be so reported by him to the Treasurer, the fact that such report was made to the Treasurer and the date when the same was so made. [Act approved March 7, 1903.] (8th Sess. Chap. 119.)

2691. (§ 3948.) *Clerk to note excess or deficiencies in taxes paid.*—As soon as the rate of taxation for the year is fixed, the county clerk must note, in connection with the entry made under the provisions of the preceding section, the amount of the excess or deficiency.

CHAPTER X.

POLL TAX.

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| Section | 2692. | <i>Persons liable to poll tax.</i> |
| " | 2693. | <i>When poll tax may be collected.</i> |
| " | 2694. | <i>Blank tax receipts furnished.</i> |
| " | 2695. | <i>Style to be changed every year.</i> |
| " | 2696. | <i>County treasurer's duties.</i> |
| " | 2697. | <i>County clerks to sign blanks and make entry of number signed.</i> |
| " | 2698. | <i>Blanks to be delivered and charged to assessor.</i> |
| " | 2699. | <i>Poll tax may be collected by seizure.</i> |
| " | 2700. | <i>Seizure and sale, how made.</i> |
| " | 2701. | <i>Debtors of persons owing poll tax to pay tax for such person.</i> |
| " | 2702. | <i>Corporations liable for poll tax.</i> |
| " | 2703. | <i>Assessor may require statement.</i> |
| " | 2704. | <i>May seize property of corporation.</i> |
| " | 2705. | <i>Who are debtors under the preceding section.</i> |
| " | 2706. | <i>Debtor may charge creditor for poll tax paid.</i> |
| " | 2707. | <i>Receipt of poll tax delivered to purchaser.</i> |
| " | 2708. | <i>Receipt only evidence of payment.</i> |
| " | 2709. | <i>Monthly settlement.</i> |
| " | 2710. | <i>Assessor's return of receipts to county clerk and yearly settlement.</i> |

Section 2711. County clerk to return to treasurer receipts not used.

“ 2712. *Treasurer to credit county clerk with such receipts.*

“ 2713. *Assessor to keep list of persons subject to poll tax.*

“ 2714. *Proceeds to be paid to poor fund.*

2692. (§ 3960.) *Persons liable to poll tax.*—Every male inhabitant of this state over twenty-one and under sixty years of age, except paupers, insane persons and Indians, not taxed, must annually pay a poll tax of two dollars.

2693. (§ 3961.) *When poll tax may be collected.*—Poll tax may be collected by the assessor at any time during the year.

2694. (§ 3962.) *Blank tax receipts furnished.*—The county treasurer must, before the first Monday of March of each year, cause to be printed blank poll tax receipts for the use of the assessor.

2695. (§ 3963.) *Style to be changed every year.*—The style of such blanks must be changed every year.

2696. (§ 3964.) *County treasurer's duties.*—The treasurer must, before the first Monday in March of each year:

1. Number and sign the blank poll tax receipts.

2. At the time of signing make an entry of the whole number thereof, and of the first and last number placed thereon, in a book by him kept for that purpose.

3. Deliver all such blanks to the county clerk, and charge him therewith.

2697. (§ 3965.) *County clerks to sign blanks and make entry of number signed.*—The county clerk, upon the receipt thereof, must sign the same, and make in a book to be kept by him for that purpose a similar entry to that prescribed in subdivision 2, of the preceding section.

2698. (§ 3966.) *Blanks to be delivered and charged to assessor.*—The county clerk must, at any time after the first Monday in March, deliver to the assessor the blanks and charge him therewith.

2699. (§ 3967.) *Poll tax may be collected by seizure.*—The assessor must demand payment of poll tax of every person liable therefor whose name does not appear upon the assessment list, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person. Poll tax shall be added upon the assessment list to other taxes of persons liable therefor, paying taxes upon real and personal property, and paid to the county treasurer at the time of the payment of other taxes. [*Act approved March 14, 1895, and identical with act approved March 8, 1893.*]

2700. (§ 3968.) *Seizure and sale, how made.*—The sale may be made after three hours' verbal notice of time and place, and the provisions of §§ 2658 (3902), 2660 (3904), 2663 (3907), inclusive, apply to such seizure and sale.

2701. (§ 3969.) *Debtors of persons owing poll tax to pay tax for such person.*—Every person indebted to one who neglects or refuses, after demand, to pay a poll tax becomes liable therefor, and must pay the same for such other person, after service upon him by the assessor of a notice in writing, stating the name of such person.

2702. (§ 3970.) *Corporations liable for poll tax.*—Every person, corporation or association employing one or more persons subject to poll tax are liable for any and all poll taxes that may be due from such employes, and may deduct the amounts paid out for such poll taxes from any sums due, or that may afterwards become due, from such employes, whether the wages are payable directly to the employes or to other persons who furnish such employes under contract.

2703. (§ 3971.) *Assessor may require statement.*—The assessor may require the person or his agent or any officer or agent or manager of any association or corporation to make a verified statement showing the number and giving the names of the employes of such person, association or corporation, and if such statement is not furnished the assessor must make an estimate of the persons so employed and assess them, and such statement is as valid as if made on a verified statement. The person, association or corporation refusing to make such verified statement, forfeits the sum of five hundred dollars, which may be recovered in an action brought in the name of the county.

2704. (§ 3972.) *May seize property of corporation.*—The assessor, in case of a failure of a person, corporation or association to pay the poll tax in the manner mentioned in this chapter, must seize so much of the property of such person, association or corporation as will be sufficient to pay the poll tax and costs, and sell the same as provided in this chapter.

2705. (§ 3973.) *Who are debtors under the preceding section.*—Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the preceding section.

2706. (§ 3974.) *Debtor may charge creditor for poll tax paid.*—Every person paying the poll tax of another may deduct the same from any indebtedness of such other person.

2707. (§ 3975.) *Receipt of poll tax delivered to purchaser.*—The assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

2708. (§ 3976.) *Receipt only evidence of payment.*—The receipt so delivered is the only evidence of payment.

2709. (§ 3977.) *Monthly settlement.*—On the first Monday in each month the assessor must make oath before the county clerk, of the total amount of poll taxes collected by him during the last preceding month, and must, at the same time, settle with the county clerk for the same, and pay into the county treasurer's office the total amount of poll taxes collected.

2710. (§ 3978.) *Assessor's return of receipts to county clerk and yearly settlement.*—On the first Monday in December of each year the assessor must return to the county clerk all the poll tax receipts received by him and not used, and must make final settlement with the county clerk and treasurer therefor.

2711. (§ 3979.) *County clerk to return to treasurer receipts not used.*—The county clerk must, as soon as the settlement is made, return to the treasurer the receipts not used.

2712. (§ 3980.) *Treasurer to credit county clerk with such receipts.*—The treasurer must credit the county clerk with the receipts so returned, and must thereupon seal them up securely and deposit them in his office.

2713. (§ 3981.) *Assessor to keep list of persons subject to poll tax.*—The assessor must keep a roll of the names and local residence, or place of business, of all persons subject to or liable to poll tax, and if paid, date and amount of each payment, and if not paid, cause of non-payment.

2714. (§ 3982.) *Proceeds to be paid to poor fund.*—The proceeds of the poll tax must be paid to the county treasurer, as provided by law, for the exclusive use of the poor fund of the county.

CHAPTER XI.

SETTLEMENTS WITH THE STATE AUDITOR AND PAYMENTS INTO THE STATE TREASURY.

Section 2715. *County treasurers to settle with auditor for and pay over to treasurer upon their order all state moneys on hand.*

“ 2716. *Penalty imposed on treasurers neglecting to settle.*

“ 2717. *Report of county clerk to state auditor.*

“ 2718. *County clerk to send report to state auditor and county treasurer.*

“ 2719. *Penalty for failure of county clerk to make or transmit report.*

“ 2720. *Deduction by state auditor on settlement.*

“ 2721. *State auditor's statement on county clerk's report and return of copy thereof.*

“ 2722. *County treasurer to file with county clerk such returned copy.*

Section 2723. County clerk to make certain entries.

“ 2724. *Rate of mileage allowed treasurer.*

“ 2725. *State auditor may examine books of any revenue officer.*

“ 2726. *Directing prosecution of delinquent revenue officer for fraudulent or other misconduct.*

“ 2727. *Special counsel may be employed; provision for expenses.*

2715. (§ 3990.) *County treasurers to settle with auditor for and pay over to treasurer upon their order all state moneys on hand.*—The treasurers of the respective counties must at any time upon the order of the state auditor and state treasurer, settle with the state auditor, and pay over to the state treasurer all moneys in their possession belonging to the state, and must, without such order settle and pay over the moneys on the first Mondays of January and July in each year.

2716. (§ 3991.) *Penalty imposed on treasurers neglecting to settle.*—Every county treasurer who neglects or refuses to appear at the office of the state auditor and state treasurer at the times specified in this title, and then and there to settle and make payment as herein required, forfeits his salary for that quarter and the expenses which would have otherwise been due him on such settlement; and the state auditor is required to withhold such.

2717. (§ 3992.) *Report of county clerk to state auditor.*—The county clerk of each county, between the first and tenth days of each month in which the treasurer of his county is required to settle with the state auditor, must make a report in duplicate, in such form as the state auditor may desire, showing specifically the amount due the state from each particular source of revenue, at the close of business on the last day of the preceding month.

2718. (§ 3993.) *County clerk to send report to state auditor and county treasurer.*—The county clerk must at once transmit by mail to the state auditor one copy of the report, and must deliver the other copy to the treasurer of his county.

2719. (§ 3994.) *Penalty for failure of county clerk to make or transmit report.*—Every county clerk who fails to make and transmit the report required by this chapter, or any other report or statement required by this title, forfeits all salary which would be otherwise due him from the county, and the county commissioners must withhold such compensation.

2720. (§ 3995.) *Deduction by state auditor on settlement.*—In the settlement the state auditor must deduct the expenses allowed to the county treasurer for his traveling, the state's portion of the repayments made under § 2687 (3944), and any other amounts due the county or the officers thereof.

2721. (§ 3996.) *State auditor's statement on county clerk's report and return of copy thereof.*—The state auditor must, after the county treasurer has made settlement and payment, enter upon each copy of the county clerk's report a statement showing:

1. The amount of money by the county treasurer paid into the state treasury.

2. The amount deducted for allowances.

And must then return one copy of the report to the county treasurer.

2722. (§ 3997.) *County treasurer to file with county clerk such returned copy.*—The county treasurer must file with the county clerk of his county the copy returned to him by the state auditor.

2723. (§ 3998.) *County clerk to make certain entries.*—The county clerk must then make the proper entries in his account with the treasurer.

2724. (§ 3999.) *Rate of mileage allowed treasurer.*—The state auditor must, in the settlement, allow the county treasurer the actual expenses incurred by him in making such settlement, which expenses must only include the money actually paid out by him in traveling to and from his county seat and the seat of government, and for meals and lodging on the trip, which claim must be presented to and allowed by the board of examiners.

2725. (§ 4000.) *State auditor may examine books of any revenue officer.*—The state auditor, as well as the state examiner, may examine the books of any officer charged with the collection and receipt of state taxes.

2726. (§ 4001.) *Directing prosecution of delinquent revenue officer for fraudulent or other misconduct.*—If, on examination, it is found that any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, the state auditor must direct the attorney general, or other counsel, to prosecute the delinquent.

2727. (§ 4002.) *Special counsel may be employed; provision for expenses.*—The state auditor or attorney general may employ other counsel, and the expenses must be audited by the board of examiners and be paid out of the state treasury.

CHAPTER XII.

MISCELLANEOUS PROVISIONS.

Section 2728. *Defects in form of assessment book may be supplied.*

“ 2729. *Omissions in delinquent lists, how corrected.*

“ 2730. *Publication of such lists.*

“ 2731. *Abbreviations.*

“ 2732. *Informality does not make assessment illegal.*

Section 2733. Fines and forfeitures to be paid to county treasurer.

- " 2734. *Annual settlements.*
- " 2735. *Saving clause.*
- " 2736. *Deputies for assessors.*
- " 2737. *State board may dispense with duplicate.*
- " 2738. *Collection of taxes by action.*
- " 2739. *Complaint in action for taxes.*
- " 2740. *Supplemental assessment.*
- " 2741. *Injunction does not lie.*
- " 2742. *Taxes may be paid under protest.*
- " 2743. *Assessor to notify owner of change in sworn statement.*
- " 2744. *Illegal tax refunded.*
- " 2745. *Other remedies superseded.*

2728. (§ 4010.) *Defects in form of assessment book may be supplied.*—Omissions, errors or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made.

2729. (§ 4011.) *Omissions, in delinquent lists, how corrected.*—When the omission, error or defect has been carried into a delinquent list or any publication, the list or publication may be re-published as amended, or notice of the correction may be given in a supplementary publication.

2730. (§ 4012.) *Publication of such lists.*—The publication must be made in the same manner as the original publication, and for not less than one week.

2731. (§ 4013.) *Abbreviations.*—In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations and figures may be used to designate the township, range, section, or parts of section.

2732. (§ 4014.) *Informality does not make assessment illegal.*—No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1. The listing of lands to the wrong person is no ground for retraining the tax sale. Los Angeles v. Los Angeles, 137 Cal. 700; 70 Pac. 770.

2733. (§ 4015.) *Fines and forfeitures to be paid to county treasurer.*—The fines, forfeitures and penalties incurred by a violation of any of the provisions of this title, must be paid into the treasury for the use of the county where the person against whom the recovery is had, resides.

2734. (§ 4016.) *Annual settlements.*—Every assessor, county

attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

2735. (§ 4017.) *Saving clause.*—All taxes assessed before the provisions of this title take effect must be collected under the laws in force at the time the assessment was made, and in the same manner as if this code had not been passed.

State v. Johnson, 16 Mont. 570; 41 Pac. 706. The assessment of property in a city was not completed until the second Monday of August, 1895, and was not governed by this section, and it was

the duty of the city treasurer to extend the city taxes on the county tax list.

Cobban v. Hinds, 23 Mont. 350; 59 Pac. 3.

2736. (§ 4018.) *Deputies for assessors.*—The board of county commissioners may allow the assessor such a number of deputies, not exceeding two in counties of the first class to be appointed by him as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

2737. (§ 4019.) *State board may dispense with duplicate.*—The state board of equalization may, by an order entered upon its minutes and certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices, of such duplicate, and must have like force and effect.

2738. (§ 4020.) *Collection of taxes by action.*—The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list, amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax; and the treasurer or state auditor, in case the treasurer refuses or neglects for fifteen days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court, and in the name of the state of Montana, to collect such tax and costs.

People v. C. P. R. Co., 83 Cal. 412; 23 Pac. 303.

2739. (§ 4021.) *Complaint in action for taxes.*—In such action a complaint in the following form is sufficient:

(Title of Court.)

The State of Montana, }
vs. }
(Naming the defendant.) }

Plaintiff avers that the defendant is indebted to plaintiff in

the sum of \$——, state and county taxes for the fiscal year 189—, with ten per cent. added for the non-payment of such taxes, and——— dollars, costs of collection to date. Plaintiff demands judgment for said several sums, and prays that a writ of attachment may issue in form as prescribed by law.

(Signed by the county treasurer, or state auditor, or his attorney.)

On the filing of such complaint the clerk must issue a summons and the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil action. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent. on the amount of the tax. In such action the certified copy mentioned in the preceding section made by the treasurer and delivered to the state auditor, is prima facie evidence that the person against whose property the tax was levied is indebted to the state of Montana in the amount of such tax. In case of payment of any such taxes after suit as above mentioned shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it and paying to the state auditor, or his attorney, the portion received as attorney's fees and other costs, must pay the remainder to the state treasurer at the times and in the manner prescribed by law for the payment of other state taxes.

2740. (§ 4022.) *Supplemental assessment.*—When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected by the assessor, as provided in this title, at any time.

2741. (§ 4023.) *Injunction does not lie.*—No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof, nor to restrain the sale of any property for the non-payment of taxes, except:

1. Where the tax, or the part thereof sought to be enjoined, is illegal, or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.

2. Where the property is exempt from taxation.

Barrett v. Shannon, 19 Mont. 400; 48 Pac. 746.

Deloughrey v. Hinds, 23 Mont. 272; 58 Pac. 711.

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1.

Western Ranches v. Custer Co., 28 Mont. 282; 72 Pac. 660.

M. O. P. Co. v. Maher, 32 Mont. 489; 81 Pac. 15. Injunction will lie if the action of the assessor or board of equalization was such that the tax complained

of is manifestly void under any circumstances; but, if the error complained of is only an irregularity on the part of the assessor, board of equalization, or treasurer, or where the tax is not necessarily void under all circumstances, the

remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in section 4026 of this code.

Hensley v. Butte, 33 Mont. 211; 83 Pac. 482.

2742. *Taxes may be paid under protest.*—That in all cases of levy of taxes, licenses or other demands for public revenue, which is deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may pay under protest such tax or license or any part thereof deemed unlawful, to the officers designated and authorized by law to collect the same; and thereupon the party so praying, or his legal representative, may bring an action in any court of competent jurisdiction against the officer to whom said tax or license was paid or against the county or municipality on whose behalf the same was collected, to recover such tax or license or any portion thereof paid under protest. The tax so paid under protest shall be held by the County Treasurer and no part thereof paid to the State Treasurer until the determination of any action brought for the recovery thereof. [*Act approved March 13, 1905.*] (9th Sess. Chap. 108.)

2743. *Assessor to notify owner of change in sworn statement.*—Whenever any person has delivered to the Assessor a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the Assessor shall increase such estimated value, or add other property to such assessment list, he shall at least ten days prior to the meeting of the County Board of Equalization, give to such person written notice of such change, which notice shall be substantially in the following form:

(Date).....

Mr.....

A change has been made in your assessment list as follows:

Assessor.....County.

Such person may then appear before the County Board of Equalization, ascertain the nature of such change, and contest the same; and if the assessment of any such person has been added to, or changed, either by the Assessor or by the County Board of Equalization, and such person has not been notified thereof and given an opportunity to contest the same before the County Board of Equalization, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the Court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in said Section 2742 (4024) of the Penal Code. When any person has appeared before the County Board of Equalization, and has contested the increase in the estimated value of his property,

or the additions of other property to his assessment list, and is aggrieved at the final action of the Board in making or allowing such increase or addition, he may, in the action provided for in said Section 2742 (4024) of the Political Code, contest and litigate the payment of taxes on such increased valuation or added property list on the same grounds and for the same reasons that he has contested the same before the County Board of Equalization, and for no other reason and on no other ground. *Provided*, that any action instituted for the purpose of recovering any tax paid under protest for any of the reasons mentioned in this Section shall be commenced on or before the 30th day of November, of the year in which such tax was paid. *Provided further*, that when any action is instituted to recover any tax paid under protest on the ground and for the reason that the valuation of the property as increased by the Board of Equalization or assessor, is an over-valuation of such property, the jury in the case shall determine the actual value of such property at the time the same became liable for taxes, and if the value as fixed by the jury is in excess of the amount on which taxes were levied, the plaintiff shall be liable in damages equal to the product obtained by multiplying such excess valuation as found by the jury by the rate per cent at which taxes were levied in the municipality where the property was assessed for the year the protest was made. [Act approved March 13, 1905.] (9th Sess. Chap. 108.)

2744. (§ 4025.) *Illegal tax refunded*.—In case it be determined in such action that said tax or license or any portion thereof so paid under protest was unlawfully collected judgment for recovery thereof and lawful interest thereon together with cost of action shall be entered in favor of the plaintiff; and upon being presented with a duly authenticated copy of such judgment the proper officer or officers of the county or municipality whose officers collected or received such tax shall audit and allow such judgment, and cause a warrant to be drawn on the treasury of that county or municipality for the amount recovered by said judgment in favor of the legal holder thereof; which warrant shall be paid in preference to warrants of any other class drawn on such treasury. [Act approved March 18, 1895.]

Barrett v. Shannon, 19 Mont. 400; 48 Pac. 746.	Mont. 284; 72 Pac. 661.
Cobban v. Hinds, 23 Mont., 350; 59 Pac. 3.	M. O. P. Co. v. Maher, 32 Mont. 490; 81 Pac. 15.
Western Ranches v. Custer Co., 28	Hensley v. Butte, 33 Mont. 210; 83 Pac. 482.

2745. (§ 4026.) *Other remedies superceded*.—The remedy hereby provided shall supercede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedy hereby provided is deemed by the court to be inadequate. [Act approved March 18, 1895.]

Cobban v. Hinds, 23 Mont. 338; 59 Pac. 1. The publication of the notice of a tax sale three weeks, when the statute required four weeks, does not render the taxes illegal, and authorize the enjoining of the collection of such tax.

Western Ranches v. Custer Co., 28 Mont. 282; 72 Pac. 661.

M. O. P. Co. v. Maher, 32 Mont. 490; 81 Pac. 15. The phrase "irregularly levied or demanded," was used by the legislature advisedly and prescribed the

limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes, the collection of which may be restrained by injunction.

Hensley v. Butte, 33 Mont. 210; 83 Pac. 482. The remedy provided by sections 4024-4026, Political Code, is not exclusive but an injunction can be issued to restrain the collection of a tax, manifestly void under all circumstances, levied by a city for special improvement purposes.

CHAPTER XIII.

LICENSES.

ARTICLE I. GENERAL PROVISIONS.

II. CLASSIFICATION OF LICENSES.

ARTICLE I.

GENERAL PROVISIONS.

- Section 2746. Licenses to be prepared and printed.*
 " 2747. *County clerk to number, sign and deliver.*
 " 2748. *County clerk to keep license account.*
 " 2749. *When license to be procured.*
 " 2750. *Prosecution of persons failing to take out license.*
 " 2751. *County treasurer, duties.*
 " 2752. *Proof on trial.*
 " 2753. *Settlements, when made.*
 " 2754. *Fee for licenses.*
 " 2755. *Lien of license.*
 " 2756. *Apportionment of moneys collected.*
 " 2757. *License, how revoked.*

2746. (§ 4040.) *Licenses to be prepared and printed.*—The county clerk must prepare and have printed blank licenses of all classes mentioned in this chapter, with the blank receipt attached for the signature of the county treasurer when sold.

2747. (§ 4041.) *County clerk to number, sign, and deliver.*—The county clerk must affix his official seal to, number and sign all licenses, and from time to time deliver them to the county treasurer in such quantity as may be required, taking his receipt therefor, and charge him therewith, giving in the entry the numbers, classes, and amount thereof.

2748. (§ 4042.) *County clerk to keep license account.*—The county clerk must keep in his office the stubs of all licenses by him delivered to the county treasurer, and a ledger in which he must keep the county treasurer's account for all licenses delivered to him, sold or returned unsold by him.

2749. (§ 4043.) *When license to be procured.*—A license must be procured immediately before the commencement of any

business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person in addition to the license provided by this chapter, also procures the license required by the ordinance or orders of such city or town.

State v. N. P. Ex. Co., 27 Mont. 421; 71 Pac. 405.

2750. *Prosecution of persons failing to take out license.*—Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the county treasurer, must direct suit in the name of the State of Montana as plaintiff to be brought for the recovery of the license tax; and in such case either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment, and such writ of attachment, may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant. It shall be the duty of the Board of County Commissioners or the state examiner, when examining the treasurer's report to investigate if any persons are doing business in the county without a license or if the amount of the license is sufficient. In either event the treasurer shall be officially notified and thereafter shall be personally liable for such license or increase unless he promptly proceeds under this Section or under Section 2755 (4049) of the Political Code to collect the same. [Act approved March 6, 1907.] (10th Sess. Chap. 122.)

2751. (§ 4045.) *County treasurer, duties.*—The county treasurer must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require, where the rate of license is divided into classes, each person to state under oath or affirmation the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney or the association or corporation of which he is the president, secretary or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary, or other officer must procure a license from the county treasurer for the term desired and the class for which such party is liable to pay; and in all cases where an under-

estimate has been made by the party applying, the party making such under estimate or the company he represented are required to pay for a license for the next quarter double the sum otherwise required.

2752. (§ 4046.) *Proof on trial.*—Upon the trial of any action authorized by this chapter the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

San Luis Obispo v. Greenberg, 120 Cal. 304; 52 Pac. 797.

2753. (§ 4047.) *Settlements, when made.*—On the first Monday in each month the county treasurer must return to the county clerk all licenses unsold, and show that he has paid into the county treasury all moneys collected for licenses sold during the preceding month.

2754. (§ 4048.) *Fee for licenses.*—For each license issued the county treasurer must collect a fee of one dollar, which must be paid into the general fund of the county.

Note.—This section was repealed by act of March 6, 1897, but not enumerated in title of act.

2755. (§ 4049.) *Lien of license.*—All property held or used in any trade, occupation, or profession for which a license is required by the provisions of this chapter, is liable for such license, and subject to a lien for the amount thereof, which lien has precedence of any other lien, claim, or other demand; and if any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property or any other property belonging to such person, and sell the same in the manner provided in § 2658 (3902) to § 2663 (3907), inclusive, of this code.

Burfiend v. Hamilton, 20 Mont. 343; 51 Pac. 161. Property used in any trade, occupation or profession for which a license is required, is liable for license, and the lien for the amount of the license has precedence over any mortgage thereon.

2756. *Apportionment of moneys collected.*—All moneys collected for licenses must be paid into the treasury of the county in which the same was collected, Fifty per cent thereof for the use of the county, and Forty-five per cent thereof must be paid over by the County Treasurer to the State Treasurer for the use of the State. [Act approved March 2, 1905.] (9th Sess. Chap. 67.)

2757. (§ 4051.) *License, how revoked.*—The conviction of any person for a violation of the law in relation to gambling or the sale of intoxicating liquors, is a revocation of the license to such person.

ARTICLE II.

CLASSIFICATION OF LICENSES.

- Section 2758. Billiard tables. Pawnbrokers. Theaters. Intelligence office. Shooting gallery.*
- “ 2759. *Retail liquor dealers.*
- “ 2760. *Retail liquor dealers. Petition for license.*
- “ 2761. *Same.*
- “ 2762. *Revocation of license.*
- “ 2763. *Oleomargarine; cigarettes; warehouses.*
- “ 2764. *Physicians and chemists.*
- “ 2765. *Peddlers and hawkers license.*
- “ 2766. *Canvassers and peddlers of farm implements and machinery.*
- “ 2767. *Peddlers. Discharged soldiers exempt from payment of license.*
- “ 2768. *Duty of clerk to issue license.*
- “ 2769. *Pools upon races.*
- “ 2770. *Brewers and manufacturers.*
- “ 2771. *Distillers.*
- “ 2772. *Keeper of stallions.*
- “ 2773. *Telephone, telegraph and electric light, gas and water companies.*
- “ 2774. *Common carriers and express companies.*
- “ 2775. *Keeper of roller skating rink.*
- “ 2776. *Laundries.*
- “ 2777. *Street railways.*
- “ 2778. *Architects, builders, contractors, manufacturers.*
- “ 2779. *Manufacturers of malt.*
- “ 2780. *Penalties.*

2758. *Billiard tables. Pawnbrokers. Theaters. Intelligence offices. Shooting gallery.*—License must be obtained for the purposes hereinafter named, for which the County Treasurer must require payment as follows:—

1. Each proprietor of a billiard, pool or bagatelle table not kept exclusively for family use, for each table three dollars and seventy-cents per quarter, and for a bowling alley, five dollars per quarter for each alley; but no license must be granted for a term less than three months.

2. The manager or lessee of every theater (not a variety or concert theater) one hundred dollars per annum; except that in towns of a population of 3500 or less, in cases where no monthly license is paid, a license of two dollars for each single performance must be paid; for each single exhibition of opera or concert singer (not exhibited in any theater where a yearly license is paid) three dollars; for minstrels, legerdemain or

shows not herein provided for, five dollars for each single performance (when not in a theater where a yearly license is paid); for each variety or concert theater, whether an admittance fee is charged or not, seventy-five dollars per month; for every circus or menagerie, including side shows, one hundred and twenty-five dollars per day; but no license must be collected from any amateur exhibition or concert for school or charitable or religious purposes.

3. For each pawn broker, fifty-five dollars per quarter.

4. For each keeper of an intelligence office, ten dollars per quarter.

5. For each keeper of a shooting gallery, for gain, fifteen dollars per quarter. [*Act approved March 7, 1903.*] (8th Sess. Chap. 117.)

2759. *Retail liquor dealers.*—Every person who sells or offers for sale, directly or indirectly, any spirituous, malt, vinous, distilled or fermented liquors or wines, must obtain a license therefor from the county treasurer, as prescribed in this Chapter, and must make the following payments therefor: In all cities, towns, villages or camps which contain a population of Ten Thousand or over, and for a distance of one mile from the limits thereof, Three Hundred and Thirty Dollars semi-annually. In all cities, towns, villages or camps which contain a population of Three Thousand Five Hundred to Ten Thousand, Two Hundred and Seventy Five Dollars semi-annually. In all cities, towns, villages or camps which contain a population of One Thousand to Thirty Five Hundred, Two Hundred and Sixty Four Dollars semi-annually. In all cities, towns, villages or camps which contain a population of Three Hundred to One Thousand, Two Hundred and Twenty Dollars semi-annually. In all cities, towns, villages or camps which contain a population under Three Hundred, or elsewhere not provided for in this Section, One Hundred and Sixty Five Dollars semi-annually. In no case shall any license contemplated in this Section be issued for a less period than Six Months. That all licenses provided for in this Act shall be negotiable and transferable in the city or county where the same are issued. [*Act approved March 3, 1905.*] (9th Sess. Chap. 82.)

State v. Settles, 34 Mont. 451; 87 Pac. 446.

2760. *Retail liquor dealers. Petition for license.*—Every person who engages in the business of a retail liquor dealer, that is, a person who sells spirituous, malt or fermented liquors or wine in less quantities than one quart, in all cities, towns, villages or camps, where the population is less than one hundred, must obtain a license from the county treasurer. But before the county treasurer shall be permitted to issue such license, petition shall first be filed and presented to the Board of County Com-

missioners of the County, signed by at least twenty freeholders residing within the particular city, town, village, camp or township in which any person seeking such license intends to engage in business, requesting the issuance of such license to such person, and they shall in their discretion thereupon direct the county treasurer to issue such license, but not otherwise. [*Act approved March 3, 1905.*] (9th Sess. Chap. 71.)

State v. Settles, 34 Mont. 451; 87 Pac. 446. The legislature, in regulating the sale of intoxicating liquors, may impose any restrictions it may deem proper on those engaged in such business, and this section is constitutional. A liquor

dealer who has paid a license cannot, at the expiration thereof, compel the county treasurer without authority from the board of county commissioners, to issue a new license on tender of the license fee.

2761. *Same.*—Nothing herein contained shall be construed so as to require the Board of County Commissioners to issue any such order for a license as a matter of right but such license may be ordered to be issued entirely within the discretion of said Board of County Commissioners. [*Act approved March 3, 1905,* § 2.] (9th Sess. Chap. 71.)

2762. *Revocation of license.*—Board of County Commissioners are hereby granted power of supervision and control over persons engaged in the sale of intoxicating liquors in their respective counties outside of the corporate limits of incorporated cities and towns. And for the purpose of exercising such supervision and control it shall be lawful for the Board of County Commissioners of any county who are authorized to issue any order for a license for the sale of intoxicating liquors under the provisions of this Act, after notice to the person or persons holding such license, a reasonable opportunity to be heard, to revoke any license granted under the provisions of this Act, and declare the same forfeited, upon proof satisfactory to the Board that such person or persons have violated any of the laws of this State regulating the sale of intoxicating liquors, or that they have violated any of the provisions of the law regulating persons so licensed to sell, or places where such liquors are sold, or that such person or persons have permitted any of the laws of this State to be violated upon the premises wherein such liquors are authorized to be sold, or if such premises shall become the resort of idle, dissolute or disorderly persons, or shall be so conducted as to disturb the peace and quiet of the neighborhood and such license shall cease to be in force from and after its revocation. [*Act approved March 3, 1905,* § 3.] (9th Sess. Chap. 71.)

2763. *Oleomargarine. Cigarettes. Warehouses.*—I. Every person, company or corporation selling oleomargarine, butterine, or imitation of cheese, shall pay a license of one cent per pound for all these articles sold.

II. Every person, or persons, who is engaged in the business of selling cigarettes, cigarette paper, or the material used in the

making of cigarettes, except tobacco, shall pay a license of Ten (\$10.00) Dollars per month.

III. Each Railway Company acting in the capacity of a warehouse for the purpose of storing and distributing goods, except any other than the capacity of common carriers, shall pay a license of Ten (\$10.00) Dollars per quarter in each county in which said business may be carried on. [*Act February 20, 1907.*] (10th Sess. Chap. 22.)

2764. *Physicians and chemists.*—No license shall be required of physicians, surgeons, apothecaries, or chemists for any wines or spirituous liquors that they may use or sell for medicinal purposes, but any apothecary or druggist who shall sell any wine or spirituous liquors without having first obtained a license as in this Act provided, shall be deemed guilty of a misdemeanor as is in the Penal Code provided, in the case of each sale made, unless each such sale shall be made upon a written prescription of a licensed physician, which prescription must be filed and numbered as other prescriptions. And no further or other license is required of any butcher by reason of any wagon used in connection with his business. [*Act approved March 6th, 1897, § 2.*] (5th Sess. 199.)

State v. Courtney, 27 Mont. 382; 71 Pac. 309.

2765. *Peddlers and hawkers' license.*—Every traveling merchant, hawker or peddler who carries a pack and vends goods, wares or merchandise must pay a license of Twelve Dollars and Fifty Cents per quarter, and every travelling merchant, hawker, or peddler, who uses a wagon, animal, or other means of transportation other than on foot, must pay a license of Fifty Dollars per quarter; and every merchant who travels from place to place, and who is not included in the above provisions and vends goods, wares or merchandise at temporary quarters, shall pay a license of Fifty Dollars per quarter; but the peddler, hawker or traveling merchant, who carries for sale and sells only agricultural products raised by himself or articles manufactured by himself is not included in the provisions of this Section. [*Act approved March 3, 1905.*] (9th Sess. Chap. 84.)

2766. *Canvassers and peddlers of farm implements and machinery.*—Every person, firm or corporation who peddles out, or after shipment to this State canvasses and sells by sample to users or consumers, clocks, agricultural implements or machinery, stoves or ranges, wagons, buggies, carriages, surries and other similar vehicles, washing machines or churns, shall pay in advance a license tax of Five Hundred Dollars for each calendar year, or any portion thereof, to be paid in each county in which said occupation is pursued. [*Act approved March 4th, 1903, § 1*] (8th Sess. Chap. 56.)

2767. *Peddlers. Discharged soldier exempt from payment of license.*—Every honorably discharged soldier, sailor, or marine of the military or naval service of the United States, who is a resident of this State and a veteran of the late Rebellion, shall have the right to peddle, hawk, vend and sell his own goods, and to engage in the business of auctioneering, without paying for the license as now provided by law, by those who engage in such business, but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in the next section of this Act. [*Act approved February 21st, 1901, § 1.*] (7th Sess. 62.)

2768. *Duty of clerk to issue license.*—On presentation to the Clerk of any County in which such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, in the war of the late Rebellion, such County Clerk shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler or auctioneer. [*Act approved February 21st, 1901, § 2.*] (7th Sess. 62.)

2769. (§ 4067.) *Pools upon races.*—Every person, corporation or association that authorizes or permits the sale of pools on any race upon the grounds or track of such person, corporation or association; or that permits any race upon such ground or track on which any pools have been sold must, for each day upon which any such race takes place, pay a license of twenty-five dollars. [*Act approved March 16, 1895.*]

2770. *Brewers and manufacturers.*—Every brewer or manufacturer of malt liquors, who sells malt liquors in quantities of more than four gallons, and whose sales amount to Three Thousand Dollars per month, or more, must pay a license of Twenty five Dollars per month; whose sales amount to less than Three Thousand Dollars and more than One Thousand Dollars per month, must pay a license of Fifteen Dollars per month; whose sales amount to less than One Thousand Dollars per month, and more than Five Hundred Dollars per month, must pay a license of Seven and 50-100 Dollars per month; whose sales amount to less than Five Hundred Dollars per month must pay a license of Five Dollars per month. Every manufacturer of Pop, Soda-water or other light drinks, put up in bottles, in all cities having a population of ten thousand people or over, shall pay a license of Sixty Dollars semi-annually in all cities or towns of more than five thousand and less than Ten Thousand in population, shall pay a license of Forty Dollars semi-annually and in all cities or towns with a population of less than Five Thousand shall pay a license of Twenty-five Dollars semi-annually. Every wholesale dealer in malt liquors exclusively, where the same are sold in quantities of more than four gallons, shall pay a license of Seventy-five Dol-

lars per annum. [*Act approved March 6th, 1897, § 3.*] (*5th Sess. 199-200.*)

State v. Courtney, 27 Mont. 382; 71 Pac. 309.

2771. (§ 4069.) *Distillers.*—Every distiller, manufacturer or rectifier of spirituous liquors must pay a license of six hundred dollars per year. [*Act approved March 16, 1895.*]

2772. (§ 4070.) *Keeper of stallions.*—Every person who keeps a stallion, jack or bull, and who permits the same to be used for the purpose of propagation for hire, must annually obtain a license therefor from the county treasurer and pay therefor as follows:

1. Horses that are hired for the purpose of propagation by the season, at one hundred dollars or more, constitute the first class, and require a license of seventy-five dollars.

2. At seventy-five dollars, and less than one hundred dollars, constitute the second class, and require a license of sixty dollars.

3. At fifty dollars, and less than seventy-five dollars, constitute the third class, and require a license of forty dollars.

4. At thirty dollars, and less than fifty dollars, constitute the fourth class, and require a license of twenty-five dollars.

5. At fifteen dollars, and less than thirty dollars, constitute the fifth class, and require a license of fifteen dollars.

6. All at less than fifteen dollars constitute the sixth class, and require a license of ten dollars.

7. For each jack ten dollars.

8. For each bull ten dollars.

A license so obtained from the county treasurer, under the provisions of this chapter, entitles the owner of the animal so licensed to take the animal so licensed into any county of this state for the purpose of propagation without further license or expense. [*Act approved March 16, 1895.*]

Note.—This section is repealed by act March 6, 1897, but not mentioned in title.

2773. *Telephone, telegraph, electric light, gas and water companies.*—Every person, corporation or association doing business in this State as a telephone, telegraph or electric company, must pay a license in each county where such business is transacted as follows:

1. Each gas and electric company doing business in cities or towns of more than ten thousand population shall pay a license of two hundred dollars per year; in towns of five thousand and less than ten thousand population, a license of one hundred dollars per year; and in towns of less than five thousand and over fifteen hundred a license of fifty dollars per year and where such companies are consolidated, such license shall be paid for each department.

2. Each telephone company shall pay a license of seventy-five cents per year for each instrument in use. This section applies to all private and public companies.

3. Each telegraph company shall pay a license of five dollars per quarter for each instrument in use.

4. Every person, company or corporation selling water in incorporated cities or towns of more than ten thousand population, shall pay a license of four hundred dollars per year; in towns of five thousand and less than ten thousand population shall pay a license of two hundred dollars per year; and in towns of less than five thousand and over fifteen hundred inhabitants shall pay a license of one hundred dollars per year; and in towns less than fifteen hundred, fifty dollars per year; and where such companies are consolidated, such license shall be paid for each department. [*Act approved March 6th, 1897, § 1.*] (5th Sess. 202.)

State v. Rocky M. T. Co., 27 Mont. 395; 71 Pac. 311. This section is intended to apply only to instruments used in business within the state by a telephone company.

2774. *Common carriers and express companies.*—Every person, association or corporation, who engages in business in this state as a common carrier in the transmission or carrying of gold dust, gold and silver coin or bullion, monies or bank notes, packages or express matter, or passengers, from one place within this state to another place within this state, for hire or profit, must procure therefor a State license from the State Treasurer, or from the County Treasurer of the County where their principal office is located, and pay therefor as follows:—

Those doing business to the amount of \$75,000.00 or over per quarter must pay \$225.00 per quarter; Those doing such business to the amount of \$50,000.00 and under \$75,000.00 per quarter must pay \$150.00 per quarter.

Those doing such business to the amount of \$25,000.00 and under \$50,000.00 per quarter must pay therefor \$75.00 per quarter.

Those doing such business to the amount of \$15,000.00 and under \$25,000.00 per quarter must pay therefor \$50.00 per quarter.

Those doing such business to the amount of \$5,000.00 and under \$15,000.00 per quarter must pay therefor \$25.00 per quarter.

Those doing such business in any amount less than \$5,000.00 per quarter must pay therefor \$5.00 per quarter.

Provided that no license or occupation tax shall be levied, imposed on or collected from any such Express Company or other common carrier by any municipal corporation. [*Act approved March 4th, 1903.*] (8th Sess Chap. 57.)

State v. Northern P. E. Co., 27 Mont. 421; 71 Pac. 405. An express company transacting interstate and intrastate business is not liable for an occupation tax.

2775. (4077.) *Keeper of roller skating rink.*—Every keeper of a roller or ice skating rink or merry-go-round in cities or towns

of three thousand people and upward, must procure a license and pay therefor the sum of fifty dollars per quarter; and in towns of one thousand, and less than three thousand people, thirty dollars per quarter; and in towns of less than one thousand inhabitants, ten dollars per quarter. [*Act approved March 16, 1895.*]

2776. *Laundries.*—Every person engaged in laundry business, other than the steam laundry business shall pay a license of Ten Dollars per quarter *provided* that this Act shall not apply to the women engaged in the laundry business, where not more than two women are engaged or employed or kept at work, and said license shall be for one place of business only. [*Act approved March 5th, 1897, § 4.*] (5th Sess. 200.)

State v. French, 17 Mont. 54, 41 Pac. 1078.

State v. Courtney, 27 Mont. 382; 71 Pac. 309.

State v. Camp Sing, 18 Mont. 128; 44 Pac. 516.

2777. *Street railways.*—Every person, corporation or association carrying on the street railway business, by the use of horse, steam, motor or electric power must in towns of four thousand inhabitants or over, pay a license of fifty dollars per quarter, and in all towns of less than four thousand inhabitants a license of twenty-five dollars per quarter. [*Act approved March 6th, 1897, § 2.*] (5th Sess. 202-3.)

2778. (§ 4082.) *Architects, builders, contractors, manufacturers.*—Every architect, builder, contractor, or manufacturer, doing a business of more than fifteen thousand dollars per year must pay a license of ten dollars per quarter. [*Act approved March 16, 1895.*]

State v. Johnson, 20 Mont. 367; 51 Pac. 820. A merchant tailor is not a manufacturer, but is subject to the li-

cense paid by one who sells goods at a fixed place of business.

2779. *Manufacturers of malt.*—Every manufacturer of malt, when not engaged in the manufacture of malt liquors in the State of Montana, must pay a license of One Hundred Dollars per annum. [*Act approved March 5th, 1897, § 5.*] (5th Sess. 200.)

State v. Courtney, 27 Mont. 382; 71 Pac. 309.

2780. *Penalties.*—Every person who commences or carries on a business, trade or profession, or calling for the transaction or carrying on of which a license is required by the provisions of this Act; without taking out or procuring a license as herein prescribed, or who violates any of the provisions of this Act, shall be punished as provided in Section 8602 (780) of the Penal Code and in addition thereto shall be liable to a penalty of ten per cent. of the amount of said license, which said penalty must be added to the amount of said license and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from the prosecution provided for in Section 8602 (780) of the Penal Code. [*Act approved March 5th, 1897, § 6.*] (5th Sess. 200.)

PART IV.

GOVERNMENT OF COUNTIES, CITIES AND TOWNS.

TITLE I. COUNTIES.

II. THE GOVERNMENT OF COUNTIES.

III. THE GOVERNMENT OF CITIES.

TITLE I.

COUNTIES.

CHAPTER I. COUNTY BOUNDARIES AND COUNTY SEATS.

II. GENERAL PROVISIONS RELATING TO COUNTIES.

CHAPTER I.

COUNTY BOUNDARIES AND COUNTY SEATS.

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2781. (§ 4100.) *County defined.*—A county is the largest political division of the state having corporate power.

Kahn v. Sutro, 114 Cal. 325; 46 Pac. 87.

2782. (§ 4101.) *The counties of the state.*—The several counties as they existed at the time of the admission of the state

into the union are the counties of the state until otherwise established or changed by law.

2783. (§ 4102.) *Same.*—The counties at the time of the admission of the state into the union were in the laws and compiled statutes of Montana named, bounded, and constituted as set forth in this chapter, except the county of Deer Lodge is as described in the act of the legislative assembly of 1891, the word "territory" being changed to "state."

2784. (§ 4103.) *Due courses defined.*—In describing courses the words "north," "south," "east," and "west," mean true courses, and refer to the true meridian unless otherwise declared.

2785. (§ 4104.) *Other courses defined.*—The words "northerly," "southerly," "easterly," and "westerly" mean due north, due south, due east, and due west, unless controlled by other words, or by lines, monuments, or natural objects.

2786. (§ 4105.) *Meaning of terms.*—The words "to," "on," "along," "with," or "by," a mountain or ridge mean summit point, or summit line, unless otherwise expressed.

2787. (§ 4106.) *Same.*—The words "to," "by," "along," "with," "in," "up," or "down" a creek, river, slough, strait, or bay mean the middle of the main channel thereof, unless otherwise expressed.

2788. (§ 4107.) *Missoula county.*—All that portion of the state embraced within the following boundaries shall be known as Missoula county, to-wit: Commencing at the point of intersection of the parallel of forty-nine degrees with the line of longitude one hundred and sixteen degrees; thence along the said line of longitude south to the summit of the Bitter Root mountains, and along the summit of the Bitter Root Mountains in a southerly direction to the summit of the Rocky mountains, and along the said summit of the Rocky mountains to the head waters of the middle branch of Stony creek; thence down the center of the said creek to Hell Gate river; thence up the center of the said Hell Gate river to a point known as Medicine hill; thence due north to the parallel forty-nine degrees, and along the said parallel of latitude to the place of beginning. The county seat is Missoula.

Note.—See Flathead county, § 2820; Teton county, § 2825; Ravalli county, § 2827; Granite county, § 2829; Sanders county, § 2841, all of which have been taken from above.

2789. *Deer Lodge county.*—That all that part of the State of Montana embraced within the following boundaries, shall be known as and shall be Deer Lodge County in the State of Montana, to-wit: Beginning at a point where the first standard parallel north of the base line, according to the survey of public lands in Montana, intersects the main range of the Rocky Mountains; thence running west along said standard parallel to the

point where the said standard parallel intersects the Deer Lodge Guide Meridian; thence south to the southeast corner of township number 4 north, of range number 10 west, of the principal base and meridian for Montana; thence west to the south corner common to sections 32 and 33 township number 4 north, of range number 10 west, of the principal base and meridian for Montana; thence in a southerly and westerly direction to the top of the divide between Willow Creek and Beef Staigh; thence along the top of said divide to the point where it intersects with the main range of the Rocky Mountains; thence following the summit of said main range of the Rocky Mountains as it trends in a southerly direction to the point where it is intersected by the divide between Bear Creek and Johnson Creek; thence following said divide in a southerly direction and continuing south to a point in the center of the channel of the Big Hole River; thence up along the center of the channel of the Big Hole River to the point where it is intersected by Rock Creek; thence up the center of the channel of Rock Creek to the summit of the Rocky Mountains; thence in a northerly direction along the summit of the Rocky Mountains to the point where it is intersected by the Flint Creek Guide Meridian; thence north along said Flint Creek Guide Meridian to the north east corner of township 5 north of range number 14 west, of the principal base and meridian for Montana; thence running east by township lines to the point at the intersection of the line between ranges 11 and 12 west of the principal base and meridian for Montana; thence north to the present south boundary of Powell County; thence east by section lines to the south east corner of section 14 in township 6 north, of range 8 west, of the principal base and meridian for Montana; thence north to the north east corner of section 2 in township 6 north, of range 8 west, of the principal base and meridian for Montana; thence east to the summit of the main range of the Rocky Mountains; thence in a southerly direction along the main range of the Rocky Mountains to the place of beginning. [*Act approved March 4th, 1903.*] (*8th Sess. Chap. 62.*)

Note.—See Lewis and Clark county, § 2798. The county seat is Anaconda.

2790. *Boundaries of Silver Bow county altered.*—The Boundaries of Silver Bow County are hereby altered to conform to the boundaries of Deer Lodge County as established by this Act. [*Act approved March 4th, 1903, § 3.*] (*8th Sess. Chap. 62.*)

2791. (§ 4109.) *Beaverhead county.*—All that portion of the state embraced within the following boundaries shall be known as Beaverhead county, to-wit: Commencing at a point known as the Beaverhead rock; thence due south to the state line; thence along the southerly boundary of the state, following the state line to the first point thereon, where the southerly boundary line of Missoula county strikes the same; thence along the

southern boundary line of Missoula county, in an easterly direction, to the point where the said line of Missoula county strikes the westerly boundary line of Deer Lodge county; thence along the southwesterly line of Deer Lodge county to the Big Hole river; thence down the center of the Big Hole river to the point where the westerly line of Madison county strikes the same; thence along the westerly line of Madison county to the place of beginning. The county seat is Dillon.

2792. (§ 4110.) *Madison county.*—All that portion of the state embraced within the following boundaries shall be known as Madison county, to-wit: Commencing at the Beaverhead rock on the Beaverhead river; thence in a right line in a northwesterly direction to the nearest point on the Big Hole river; thence up said river to the mouth of Camp Creek; thence up Camp Creek to the right hand fork thereof; thence up the said right hand fork to its source; thence in a right line to the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence down the middle of the main channel of the Jefferson river to a point in said river opposite to where the Boulder river puts into the Jefferson river; thence in a right line in a southeasterly direction to the mouth of the Big canyon, on Willow creek; thence in a right line in an easterly direction to Foreman's crossing of the Madison river; thence in a right line east to the top of the main range or ridge of the mountains dividing the waters of the Gallatin and Madison rivers; thence south to the state line; thence west along said line to a point where the southeast corner of Beaverhead county strikes said state line; thence along the eastern boundary line of Beaverhead county in a northerly direction to the place of beginning. The county seat is Virginia City.

Additional territory attached to Madison and Beaverhead counties.

1. That portion of the public domain that is described in the act of congress approved February 17, 1873, entitled "An act to adjust the western boundary of Dakota territory," lying east of an extension due south of the line dividing the counties of Madison and Beaverhead, is hereby attached to and shall hereafter comprise a portion of the county of Madison.

2. All the remaining portion of said public domain lying west of said line, be and the same is hereby attached to and shall hereafter comprise a portion of the county of Beaverhead.

2793. (§ 4111.) *Jefferson county.*—All that portion of the state embraced within the following boundaries shall be known as Jefferson county, to-wit: Commencing at the southeast corner of Lewis and Clark county, on the Missouri river; thence up said Missouri river to the mouth of the Jefferson river; thence up said Jefferson river to "Parson's bridge" across said river; thence westerly along Parson's toll road (leading from said bridge to

Butte City) to the point where said road crosses Fish creek; thence up said Fish creek to the base of the mountains; thence northerly to the summit of the main Rocky mountain range; thence along said Rocky Mountain range to the Bald mountains, at the head of Ten Mile creek, or the eastern boundary of Lewis and Clark county; thence easterly along said boundary line to the place of beginning. The county seat is Boulder.

Note.—See Broadwater county, § 2834.

2794. *Lewis and Clark county.*—All that part of the State of Montana embraced within the following boundaries, shall be known as and shall be Lewis and Clark, to-wit: Beginning at a point where Sun River crosses the Helena Guide Meridian, thence up Sun river on the most northerly branch thereof that heads in the Rocky Mountains to the crest of the said Rocky Mountains. Thence southerly along the crest of the said Rocky Mountains to the head of Ten Mile Creek; thence along the divide between Ten Mile Creek and the waters of the North Boulder to the divide between the waters of Lump Gulch, and Ten Mile Creek; thence along said divide to the divide between the waters of Grizzly Gulch and Lump Gulch; thence along said divide to the divide between the waters that come into Dry Gulch above Helena and the waters of Prickly Pear Creek to the north peak of the mountains easterly from Helena known as Dry Gulch Mountains; thence due East to the Missouri River; thence along the middle of the main channel of the Missouri River to a point in said River where the present easterly boundary line of Lewis and Clark County intersects the west boundary line of Section Thirty-two Township Ten North of Range One East; Thence north along said line to its intersection with Cave Gulch thence up the said Cave Gulch to the summit of the Big Belt Mountains; thence along the summit of said mountains to the south west corner of Township Fourteen North Range One East; thence west along the south line of Township Fourteen North to the south west corner of Township Fourteen North, Range One West; thence north along the west side of Range One West to a point on said Range line directly opposite the Junction of the Dearborn River with the Missouri River; thence directly west to the Junction of the said Dearborn River with the Missouri River, thence up the middle of the main channel of the Dearborn River to its intersection with the Helena Guide Meridian; thence along the said Helena Guide Meridian to its intersection with Sun River, the place of beginning. [*Act approved March 6th, 1897, § 1.*] (5th Sess. 53.)

Note.—County seat is Helena.

2795. *Segregation of territory.*—All territory and appurtenances within the boundaries of Lewis and Clark County as by this Act established heretofore belonging to Meagher county, Broadwater county, and Cascade county are hereby segregated from said counties of Meagher, Broadwater and Cascade and are

attached to and made a part of Lewis and Clark. [*Act approved March 6th, 1897, § 2.*] (*5th Sess. 53-4.*)

2796. *Boundaries of Meagher, Broadwater and Cascade counties altered.*—The boundaries of Meagher, Broadwater, and Cascade County are hereby altered to conform to the boundaries of Lewis and Clark County as established by this Act. [*Act approved March 6th, 1897, § 3.*] (*5th Sess. 54.*)

2797. *Lewis and Clark county, amended.*—All that part of the State of Montana embraced within the following boundaries shall be known as and shall be Lewis & Clark County, to-wit: Beginning at a point where Sun River crosses the Helena Guide meridian, thence up Sun River on the most northerly branch thereof that heads in the Rocky Mountains to the crest of the said Rocky Mountains; thence southerly along the crest of the said Rocky Mountains to the point where said crest is intersected by the west boundary line of Range Eleven west of the Montana Principal Meridian; thence south along the west boundary line of Townships Twenty, Nineteen, Eighteen and Seventeen north of said Range Eleven west to the southwest corner of Township Seventeen north of Range Eleven west; thence east along the south boundary of Township Seventeen north of Range Eleven west to the northwest corner of Township Sixteen north of Range Eleven west; thence south along the west boundary line of Township Sixteen north of Range Eleven west to the southwest corner of said Township Sixteen; thence east along the south boundary line of Township Sixteen north of Range Eleven west to the southeast corner thereof; thence south along the west boundary line of Township Fifteen north of Range Ten west, to the southwest corner of said Township Fifteen; thence east along the south boundary line of said Township Fifteen to the southeast corner thereof; thence south along the west boundary line of Townships Fourteen and Thirteen north of Range Nine west to the southwest corner of said Township Thirteen; thence east along the south boundary line of Township Thirteen north of Ranges Nine and Eight west to the northwest corner of Township Twelve north of Range Seven west; thence south along the west boundary line of Townships Twelve and Eleven north of Range Seven west to the corner between Sections Eighteen and Nineteen of said Township Eleven north of Range Seven west; thence east along the south boundary lines of Sections Eighteen, Seventeen, Sixteen, Fifteen, Fourteen and Thirteen of said Township Eleven north of Range Seven west to the boundary line between said Township Eleven north of Range Seven west and Township Eleven north of Range Six west; thence south along the west boundary line of said Township Eleven north of Range Six west to the southwest corner of said Township Eleven north of Range Six west; thence east along the

south boundary line of said Township Eleven north of Range Six west to the point of intersection with the present line between Deer Lodge and Lewis & Clark Counties; thence southeasterly along the said crest of the Rocky Mountains to the head of Ten Mile Creek; thence along the divide between Ten Mile Creek and the waters of the North Boulder to the divide between the waters of Lump Gulch, and Ten Mile Creek; thence along said divide between the waters of Grizzly Gulch and Lump Gulch; thence along the said divide to the divide between the waters that come into Dry Gulch above Helena and the waters of Prickly Pear Creek to the north peak of the mountains easterly from Helena known as Dry Gulch Mountains; thence due east to the Missouri River; thence along the middle of the main channel of the Missouri River to a point in said river where the present easterly boundary line of Lewis & Clark County intersects the west boundary line of Section Thirty-two, Township Ten north of Range One east; thence north along said line to its intersection with Cave Gulch; thence up the said Cave Gulch to the summit of the Big Belt Mountains; thence along the summit of the said mountains to the southwest corner of Township Fourteen north of Range One east; thence west along the south line of Township Fourteen north to the southwest corner of Township Fourteen north of Range One west; thence north along the west line of Range One west to a point on said Range line directly opposite the junction of the Dearborn River with the Missouri River; thence directly west to the junction of the said Dearborn River with the Missouri River; thence up the middle of the main channel of the Dearborn River to its intersection with the Helena Guide Meridian; thence along the said Helena Guide Meridian; thence along the said Helena Guide Meridian to its intersection with Sun River, the place of beginning. [*Act February 28, 1899, § 1.*] (*6th Sess. 44-5.*)

2798. *Boundaries of Deer Lodge county altered.*—The boundaries of Deer Lodge County are hereby altered to conform to the boundaries of Lewis & Clark County, as established by this Act. [*Act approved February 28th, 1899, § 3.*] (*6th Sess. 44-5.*)

2799. *Correct spelling of name.*—That the Name of Lewis and Clarke County be, and the same is hereby corrected in its spelling to read "Lewis and Clark County." [*Act approved February 10, 1905, § 1.*] (*9th Sess. Chap. 13.*)

2800. (§ 4113.) *Meagher county.*—All that part of the state embraced within the following boundaries shall be known as Meagher county, to-wit: Commencing in the middle of the main channel of the Missouri river, opposite the mouth of Sixteen Mile Creek; thence easterly along the center of the main channel of said Sixteen Mile creek four miles; thence north to the northern boundary of Gallatin county; thence due east along said line to

the one hundred and ninth degree of longitude; thence due north along the one hundred and ninth degree of longitude to the middle of the main channel of the Musselshell river; thence down the middle of the main channel of Musselshell river to a point due east of the mouth of Smith's river; thence due west along the southern boundary line of Chouteau county to the middle of the main channel of the Missouri river; thence up the middle of the main channel of the Missouri river to the place of beginning. The county seat is White Sulphur Springs.

Note.—See Lewis and Clark county, § 2749; Cascade county, §§ 2813-2814; Broadwater county, § 2834.

2801. (§ 4114.) *Gallatin county*.—All that part of the state embraced within the following boundaries be known as Gallatin county, to-wit: Commencing at the southeast corner of Meagher county on the one hundred and ninth parallel of longitude, thence south along said parallel of longitude to a point in the middle of the Yellowstone river; thence up the middle of the Yellowstone river to the point where it is crossed by the forty-fifth parallel of latitude; thence west along said forty-fifth parallel to the one hundred and eleventh parallel of longitude; thence south along the one hundred and eleventh parallel to the summit of the Rocky mountains; thence westerly along the summit of the Rocky mountains to the southeastern corner of Madison county; thence northerly along the eastern line of Madison county to where it strikes Jefferson river; thence down the middle of Jefferson river to its mouth; thence down the middle of the Missouri river to a point opposite the mouth of Crow creek; thence due east to the place of beginning, on the one hundred and ninth parallel of longitude.

Amendment.

The northern boundary of Gallatin county shall be as follows, to-wit: Commencing at a point in the middle of the Missouri river, opposite the mouth of Sixteen Mile creek, thence easterly up the main channel of Sixteen Mile Creek four miles; thence north to the south boundary of Meagher county; and thence due east along said line to the one hundred and ninth parallel of longitude.

Gallatin county extended.

All that part of the Crow Indian reservation included in the treaty now pending before the congress of the United States shall upon the ratification of said treaty be attached to and become a part of Gallatin county, Montana. The county seat is Bozeman.

Note.—See Park county, § 2812.

2802. (§ 4115.) *Chouteau county*.—All that portion of the state embraced in the following described boundaries shall be known as the county of Chouteau to-wit: Commencing at a point in the middle of the main channel of the Missouri river opposite

to the mouth of Deep creek; thence due east to intersect with the one hundred and eighth meridian of longitude; thence due north along the one hundred and eighth meridian of longitude to the intersection of the forty-ninth parallel of latitude; thence due east along the forty-ninth parallel of latitude to a point directly north of Medicine Tree hill; thence due south to the summit of the main range of the Rocky mountains, thence along the summit of said mountains in a southerly direction to the head of the most northerly branch of Sun river that heads in the Rocky mountains; thence in an easterly direction down the middle of said branch of Sun river to its mouth; thence down the middle of the main channel of Sun river to the middle of the main channel of the Missouri river; thence up the middle of the main channel of the Missouri river to the place of beginning. The county seat is Fort Benton.

Note.—See Cascade county, §§ 2813, 2817; Flathead county, § 2820; Teton county, § 2825.

2803. *Spelling of name.*—That the name of Choteau County be, and the same is hereby amended in its spelling to read "Chouteau County." [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 74.)

2804. (§ 4116.) *Dawson county.*—All that part of the state embraced within the following boundaries shall be known as Dawson county, to-wit: Commencing at the intersecting point of parallel of latitude forty-seven degrees with meridian of longitude one hundred and eight degrees, and thence along said parallel forty-seven degrees to meridian of longitude one hundred and four degrees, and from thence along said meridian north to forty-ninth parallel of latitude, and from thence along said parallel forty-nine degrees to meridian of longitude one hundred and eight degrees, and from thence south along said meridian to place of beginning.

Amendment.

The southern boundary line of Dawson county shall be as follows, to-wit: Commencing ten miles south of the intersecting point of the twenty-seventh degree of longitude west from Washington, with the forty-seventh degree of north latitude; thence due west and parallel with said parallel of forty-seven degrees to the Musselshell river; thence following the line of said river to the northern boundary line of Meagher county; thence west along said line to the one hundred and eighth meridian of longitude. And the northern boundary line of Custer county shall be made to conform to the southern boundary line of Dawson county, so far as said Dawson county extends. The county seat is Glendive.

Note.—See Valley county, § 2823.

2805. (§ 4117.) *Custer county.*—All the remaining portion of the state not included in the counties hereinafter named in this chapter shall be known as Custer county. The county seat is Miles City.

Note.—See Yellowstone county § 2809; Rosebud county, § 2840.

2806. (§ 4118.) *Silver Bow county*.—The territory included within the following metes and bounds shall be known as Silver Bow county, to-wit: Beginning at a point where the first standard parallel north of the base line, according to the government survey of public lands in Montana, intersects the main range of the Rocky mountains; thence running west along said first standard parallel to the point where said parallel intersects the Deer Lodge guide meridian; thence south six miles more or less, to the southeast corner of township No. four north, of range No. ten west, of the principal base and meridian for Montana; thence west to the intersection of the middle branch of Stony creek; thence up the middle of Stony creek to the summit of the Rocky mountains; thence in a southerly direction to the nearest stream of water that empties into the Big Hole river; thence down the center of said river to the mouth of Camp creek; thence up Camp creek to its right hand fork; thence up said fork to its source; thence in a direct line to the summit of Table mountain; thence in a direct line to Parson's bridge on the Jefferson river; thence westerly along Parson's toll road, leading from Parson's bridge to Butte City, to the point where said road crosses Fish creek; thence up Fish creek to the head of Belcher's ditch; thence in a direct line to the forks of Little Pipestone creek, near the site of Parson's old toll gate; thence up the north fork of Little Pipestone creek to its source; and thence in a direct line to the nearest point of the summit of the Rocky mountains to the place of beginning. The boundaries of Jefferson county are hereby changed to conform to the boundaries herein established. The county seat is Butte City.

Note.—See Deer Lodge county, § 2789.

2807. (§ 4119.) *Yellowstone county*.—All that portion of the state lying and situate within the following boundaries shall be known as Yellowstone county, to-wit: Beginning at a point at the confluence of the Yellowstone and Big Horn rivers; thence following the center of the channel of said Yellowstone river, to a point opposite the first divide east of White Beaver creek in Gallatin county; thence following said divide to the summit of the dividing ridge between the Musselshell and Yellowstone rivers; thence on a straight line north to the southern boundary of Meagher county; thence east along said boundary to the one hundred and ninth meridian of longitude; thence following said meridian to the Musselshell river; thence down the center of the channel of said river to what is known as the Big Bend, to a point where the old Stanley road crosses the Musselshell river; thence on a direct line to the place of beginning. The county boundaries of the counties of Gallatin and Custer are hereby altered to conform to the county boundaries of Yellowstone county, as established in this section.

Amendment.

All that portion of the Crow Indian reservation lying between the Wyoming line and the Yellowstone river and west of the Big Horn river, in the state of Montana, that may hereafter be segregated and thrown open for settlement shall form a part of Yellowstone county. All that portion of the Crow Indian reservation above described is attached to Yellowstone county for judicial purposes. The county seat is Billings.

Note.—See Sweetgrass county, § 2832.

2808. *Yellowstone county; portion of Crow reservation.*—That all that portion of the Crow Indian Reservation in the State of Montana lying between the south boundary line of said Reservation and Yellowstone River, and west of the Mid Channel of the Big Horn River, is hereby bestowed upon and made a part of Yellowstone County. [*Act approved March 5th, 1897, § 1.*] (5th Sess. 55.)

2809. *Boundaries of Custer county altered.*—That the boundary lines of the Counties of Yellowstone and Custer are hereby altered so far as may be necessary to make them conform to the provisions of this Act. [*Act approved March 5th, 1897, § 2.*] (5th Sess. 55.)

2810. *Pending suits for taxes not affected.*—Nothing in this Act shall be so construed as to in any way affect or prejudice any suit now pending in any court of the State of Montana, or in any court of the United States, by Custer County against any person or persons or corporations for the collection of taxes due from such person or persons or corporation to the County of Custer: Nor as entitling Yellowstone County to the right to collect any taxes whatsoever that may have been levied by Custer County prior to the passage of this Act on any property within the limits of the territory described in Section 2808 (1), of this Act, which said taxes are hereby declared to be due to and the sole property of Custer County; and the treasurer of Custer county shall have the right to enter that portion of territory now segregated and bestowed upon Yellowstone County and to distrain for and sell property for unpaid taxes due or to become due Custer County and to prosecute all such suits at law or in equity as may be necessary for the collection of such taxes, to the same extent and as fully as if this Act had not been passed. [*Act approved March 5th, 1897, § 9.*] (5th Sess. 55.)

2811. *Fergus county.*—All that portion of the State of Montana lying and being situated within the following boundaries shall be known as Fergus County, to-wit: Beginning at the middle of the main channel of the Missouri River, opposite the middle of the main channel of the Musselshell River, running, thence, up the middle of the main channel of the Missouri River to a point opposite the middle of Arrow Creek; thence, up the middle of Arrow Creek to a point due east of the mouth of Smith River,

where the same empties into the Missouri River; thence, due west to the west boundary line of Township 19, north of Range 11, east; thence, south on the boundary line between Ranges 10 and 11, east to the center of the Divide, between the waters of Smith River, Musselshell River and Judith River; thence, easterly along the middle of said Divide to the most easterly point of the Belt Mountains, at Judith Gap; thence, due east to the nearest branch of Careless Creek; thence, down the middle of Careless Creek to the Musselshell River; thence, down the middle of the Musselshell River to the place of beginning. The county seat is Lewistown. [*Act approved February 21, 1907, § 1.*] (*10th Sess. Chap. 28.*)

2812. (§ 4121.) *Park county.*—That portion of the state lying and situated within the following boundaries shall be known as Park county, viz.: Beginning at the northwest corner of Yellowstone National park and running thence one mile west; thence north, to the northwest corner of township seven south, of range six east, of the principal meridian; thence northeasterly along the watershed or summit of the Belt range of mountains to the southwest corner of township two south, of range eight east of the principal meridian; thence due north to the south boundary line of Meagher county; thence east along the south boundary line of Meagher county to the west boundary line of Yellowstone county; thence south along the west boundary line of Yellowstone county to Yellowstone river; thence westerly along the Yellowstone river to the mouth of Big Boulder river; thence southerly and easterly along the west and south boundaries of the Crow Indian reservation to the north boundary of Wyoming, at the southwest corner of said Crow Indian reservation; thence west along the north boundaries of Wyoming and the Yellowstone National park to the place of beginning. The county boundaries of the county of Gallatin are hereby altered to conform to the county boundaries of Park county. The county seat is Livingston.

Note.—Carbon county, § 2831. Sweet Grass county, § 2832.

2813. *Cascade County.*—All that part of the State of Montana embraced within the following boundaries shall be known as and shall be Cascade county, Montana, to-wit: Beginning in the middle of the main channel of the Missouri river at a point on the Northern boundary of township numbered twenty-two North, of range six East; thence running West along the North boundary of townships twenty-two North to the prime Meridian of Montana; thence South along the said prime meridian to the North boundary of townships twenty-one North; thence West along the Northern boundary of said townships twenty-one North to the Western boundary of township twenty-one North of range two West; thence South to the middle of the main channel of Sun River, thence Westerly up the

middle of the main channel of Sun River to the Helena Guide meridian; thence South along the Helena guide meridian to its intersection with the middle of the main channel of Dearborn River; thence down the middle of the main channel of Dearborn River to the middle of the main channel of the Missouri River; thence up the middle of the main channel of the Missouri River to its intersection with the North boundary line of townships thirteen North; thence East along the North boundary line of townships thirteen North to the Southeast corner of township fourteen North of range one East; thence North to the Southeast corner of township fifteen North of range one East; thence East to the Southeast corner of township fifteen North of range three East; thence North to the Northeast corner of township fifteen North of range three East; thence East along the North line of township fifteen North to the summit of the main range of the Little Belt Mountains; thence in a Southerly direction along the summit of the main range of said Little Belt mountains to the Northeast corner of township ten North of range ten East; thence in a Northerly direction along the summit of the divide between the waters of the Musselshell River and Sheep and Belt Creeks on the one side and the Judith River and Wolf Creek on the other side, to the North line of townships fifteen North; thence East along the North line of townships fifteen North to the Northeast corner of township fifteen North, range ten East; thence North along the East boundary line of range ten East to the South boundary line of Chouteau county; thence West along the South boundary line of Chouteau county to its intersection with the East boundary of township nineteen north, of range eight East; thence North along the East boundary of said township nineteen North of range eight East to the fifth standard parallel North; thence West along said fifth standard parallel North to a point in the middle of the main channel of Belt Creek; thence in a Northwesterly direction following the main channel of Belt Creek to the middle of the main channel of the Missouri River; thence along the main channel of the Missouri River to the place of beginning. [*Act approved March 1st, 1897, § 1.*] (5th Sess. 50-1.)

2814. *Portions of Meagher county attached to Cascade county.*
—All that portion of Meagher County embraced within the following boundaries shall be segregated from Meagher County and attached to and made a part of the County of Cascade, to-wit: Beginning at the southern extremity of the main division line, running north and south, between Cascade and Fergus Counties and between the tract hereby described and Fergus County, being a point near the middle of the east line of Township eleven, north of Range ten east, as the said Township would appear if officially surveyed; thence running along a line in a northwesterly direction

following the summit of the divide between the waters of the Musselshell River and Sheep and Belt Creeks on the one side, and the Judith River and Wolf Creek on the other side to its intersection with the present southern boundary line of Cascade County, about six miles southerly from the town of Neihart; thence following the present boundary line between Cascade and Meagher Counties in a northerly and thence easterly direction to its intersection with the boundary line between Cascade and Fergus County; thence south along the said line between Cascade and Fergus Counties and between Fergus County and the tract hereby described to the point of beginning. The boundary line between Meagher and Cascade Counties is hereby altered so as to conform to the provisions of this Act. [*Act approved February 28th, 1899, § 1.*] (*6th Sess. 41-2.*)

2815. *Same.*—All that portion of the County of Meagher embraced within the following boundaries shall be segregated from the County of Meagher, attached to and made a part of the County of Cascade, to-wit: Beginning at the southeast corner of Township fifteen north of Range three east and running thence east along the south line of Township fifteen north, a distance of six miles to a point on the east line of Range four east; thence running north along the east line of Range four east to its intersection with the present southern boundary line of Cascade County; thence west six miles to the northeast corner of Township fifteen north of Range three east; thence south to the point of beginning; said tract hereby described if officially surveyed would be Township fifteen north of Range four east. The boundary lines of the counties of Meagher and Cascade are hereby altered so as to conform to the provisions of this Act. [*Act approved March 6th, 1899, § 1.*] (*6th Sess. 43.*)

2816. *Boundaries of Meagher county altered.*—The boundaries of Meagher county are hereby altered so as to conform to the boundaries of Cascade county as established by this Act. [*Act approved March 1st, 1897, § 3.*] (*5th Sess. 51.*)

2817. *Portion of Chouteau county attached to Cascade.*—All that portion of the county of Chouteau embraced within the following boundaries is hereby segregated from the said county of Chouteau and attached to and made a part of the county of Cascade, to-wit: Beginning at the established southeast corner of township twenty north of range eight east and running thence south to the line between Chouteau and Cascade counties; thence running west along the line between said counties to the line between ranges seven and eight east; thence running north along said range line to the established southwest corner of township twenty north of range eight east; thence running east along the south boundary of said township to the place of beginning. [*Act approved March 3rd, 1903, § 1.*] (*8th Sess. Chap. 51.*)

2818. *Segregation of territory.*—All territory and appurtenances within the boundaries of Cascade County as by this act established heretofore belonging to Chouteau County are hereby segregated from said Chouteau County and are attached to and made a part of Cascade County. [*Act approved March 3rd, 1903, § 2.*] (8th Sess. Chap. 51.)

2819. *Boundaries of Chouteau county altered.*—The boundaries of Chouteau County are hereby altered to conform to the boundaries of Cascade County as established by this act. [*Act approved March 3rd, 1903, § 3.*] (8th Sess. Chap. 51.)

2820. (§ 4123.) *Flathead county.*—That all that portion of the state of Montana embraced within the following boundaries shall be known as and shall be Flathead county, in the state of Montana, to-wit: Commencing on the forty-ninth parallel of latitude at a point where the same is intersected by the summit of the main range of the Rocky mountains; thence in a southerly direction following the summit of said mountains to a point where the same meets and is intersected by the eastern boundary line of Missoula county; thence south along said boundary line to latitude forty-seven degrees and thirty-five minutes; thence west along said line of latitude to meridian one hundred and fourteen degrees and thirty-five minutes west; thence north along said meridian to the sixth standard parallel; thence west and along said parallel to meridian one hundred and fifteen degrees west; thence north along said meridian to the forty-eighth parallel of latitude; thence west along said parallel to a point where the same is intersected by the summit of the divide or watershed between the Kootenai and Clark's Fork of the Columbia rivers, the same being known as the Cabinet range of mountains; thence in a northwesterly direction following the summit of said divide or watershed to the eastern boundary line of the state of Idaho; thence north along said Idaho line to the forty-ninth parallel of latitude; thence east along said parallel to the place of beginning. [*Act approved Feby. 6, 1893.*]

Note.—County seat is Kalispell.

2821. (§ 4124.) *Boundaries of Chouteau and Missoula altered.*—The boundaries of Chouteau and Missoula counties are hereby altered so as to conform to the boundaries of Flathead county as established by this act. [*Act approved Feby. 6, 1893.*]

2822. *Boundaries of Deer Lodge county altered.*—That all that part of the county of Deer Lodge lying north of latitude forty-seven degrees and thirty-five minutes north, shall be and the same is hereby added to and become a part of the County of Flathead. The boundaries of Deer Lodge County are hereby altered so as to conform to the boundaries of Flathead County as established by this Act. [*Act approved March 6th, 1899, § 1.*] (6th Sess. 47.)

2823. (§ 4125.) *Valley county*.—That all that portion of the state of Montana embraced within the following boundaries, to-wit: Beginning in the middle channel of the Missouri river on the one hundred and eighth meridian of longitude, thence north along the one hundred and eighth meridian of longitude to the intersection of the forty-ninth parallel of latitude, thence due east along the forty-ninth parallel of latitude to the intersection of the one hundred and fourth meridian of longitude; thence due south along the one hundred and fourth meridian of longitude to the middle channel of the Missouri river; thence up the Missouri river in the middle of the main channel thereof, to the one hundred and eighth meridian of longitude, it being the place of beginning, be and the same is hereby created, set apart and established as a county to be known as and called Valley county. [Act approved Feby. 6, 1893.]

Note.—County seat is Glasgow.

2824. (§ 4126.) *Boundaries of Dawson county*.—The county boundaries of Dawson county are hereby altered to conform to the county boundaries of Valley county, as established by this act. [Act approved Feby. 6, 1893.]

2825. (§ 4127.) *Teton county*.—That all that portion of the state of Montana embraced within the following boundaries, to-wit: Beginning at a point in the center of Sun river where the same intersects the west line of Cascade county, running thence north to the southwest corner of township twenty-two north, range two west; thence east to the principal meridian of Montana; thence due north to the northern boundary of the United States and the state of Montana; running thence due west along the said boundary line of the United States to the summit of the main range of the Rocky mountains; running thence southeasterly, meandering along the summit of the main range of the Rocky mountains to the head waters of the north fork of the Sun river, and thence southeasterly meandering and following the center of the channel of the north fork of the Sun river to Sun river; thence meandering down Sun river to the place of beginning, shall be known and designated as the county of Teton. [Act approved Feby. 7, 1893.]

Note.—County seat is Choteau.

2826. (§ 4128.) *Boundaries of Chouteau and Missoula counties*.—The county boundaries of Chouteau and Missoula counties are hereby altered so as to conform to the boundaries of Teton county, as established by this act. [Act. approved Feby. 7, 1893.]

2827. (§ 4129.) *Ravalli county*.—All that portion of the state of Montana lying and situated within the following boundaries, to-wit: South of a line drawn due east and west across the Bitter Root valley from the Deer Lodge county line on the east, to the Idaho line on the west, on the township line dividing townships eleven north, range twenty east, from ten north, range

twenty west, be and the same is hereby created and set apart and established as a county to be known and called Ravalli county. [Act approved March 2, 1893.]

Note.—County seat is Hamilton.

2828. (§ 4130.) *Boundaries of Missoula county.*—The county boundaries of the county of Missoula are hereby altered to conform to the county boundaries of Ravalli county as established by this act. [Act approved Feby. 16, 1893.]

2829. (§ 4131.) *Granite county.*—That all that portion of the state of Montana embraced within the following boundaries shall be known as, and shall be Granite county, in the state of Montana, to-wit: Beginning at a point on the present south boundary of Deer Lodge county, where it intersects the Flint creek guide meridian, thence north along said Flint creek guide meridian to the northeast corner of township five north, range fourteen west; thence running east by township lines to a point at the intersection with the line between ranges eleven and twelve west, and running thence north by township lines to the intersection with the divide between Big Blackfoot and Hell Gate rivers; thence westerly along the summit of said divide to the intersection with the west boundary line of Deer Lodge county; thence following said west boundary of Deer Lodge county to the northeast corner of Ravalli county; thence along the north boundary line of said county to a point due north of the summit of the mountain range dividing Rock creek and Bitter Root rivers; thence south along the summit of said range and following said summit as it trends easterly to a point on the Flint creek guide meridian; thence north along said Flint creek guide meridian to its intersection with the present south boundary of Deer Lodge county which is the place of beginning. [Act approved March 2, 1893.]

Note.—County seat is Phillipsburg.

2830. (§ 4132.) *Boundaries of Deer Lodge and Missoula counties altered.*—The boundaries of Deer Lodge and of Missoula county are hereby altered so as to conform with the boundaries of Granite county, as established by this act. [Act approved March 2, 1893.]

2831. (§ 4133.) *Carbon county.*—That all that portion of Park county, and Yellowstone county situated within the following boundaries, to-wit: Beginning at a point in the midchannel of the Yellowstone river, opposite to the mouth of the Stillwater river; following thence down the midchannel of said Yellowstone river to the intersection of said channel of said Yellowstone river with the township line running between ranges twenty-four east and twenty-five east; thence following said township line due south to its intersection with the western boundary of the Crow Indian reservation; following thence in a southwesterly direction the west line of said Crow Indian reservation to the terminus of the said southwest direction of said line; thence running due east to the intersection of the midchannel of the Big Horn river;

thence following the said channel of the said Big Horn river up in a southwesterly direction to its intersection with the north line of the state of Wyoming, all of said boundary from the said northwest corner of the Crow Indian reservation to the Wyoming line being a part of the boundary line of the Crow Indian reservation, as established by law; proceeding thence from the intersection of the midchannel of the Big Horn river with the south line of the state of Montana, due west to the intersection of the south line of the state of Montana with the township line separating range fifteen east from range sixteen east; thence following along the line between said ranges fifteen and sixteen east to a point in the midchannel of Stillwater river; thence following midchannel of the said Stillwater river to place of beginning be, and the same is hereby, created into a new county, to be known as and named Carbon county. [*Act approved March 4, 1895.*]

Note.—County seat is Red Lodge.

2832: (§ 4134.) *Sweet Grass county.*—That all of that part of Park, Yellowstone and Meagher counties situated within the following boundaries, to-wit: Beginning at a point which when surveyed will be the southwest corner of section thirty-five, township seven south, range twelve east, and running thence north along the west boundaries of sections thirty-five, twenty-six, twenty-three, fourteen, eleven and two, of said township seven south, range twelve east, continuing north along the west boundaries of sections thirty-five, twenty-six, twenty-three, fourteen, eleven and two of township six south, range twelve east, to the first standard parallel south; thence east along said first parallel south to a point which when surveyed will be the southwest corner of section thirty-five, township five south, range twelve east; thence north along the west boundary of sections thirty-five, twenty-six, twenty-three, fourteen, eleven and two in each of townships of five, four, three, two and one respectively; all in township five south range twelve east, to the intersection of base line at the northwest corner of section two of said township one; thence west along said base line to the point of intersection of range line between ranges eleven and twelve east, thence north along range line between eleven and twelve east to a point of intersection with the line between township six and seven north, of range twelve east; thence east along said township line to the point of intersection with division lines between eighteen and nineteen east; thence south along the line between ranges eighteen and nineteen east to the point of intersection with the township line between townships two and three north; thence east along said township line to the point of intersection with the line between ranges nineteen and twenty east; thence south along the line between ranges nineteen and twenty east, to the midchannel of the Yellowstone river; thence down the midchannel of the Yellowstone river to a point opposite the mouth of the Stillwater

river or creek; thence up the midchannel of the Stillwater river to a point of intersection with the line between ranges fifteen and sixteen east; thence south along the line between ranges fifteen and sixteen east, to the point of intersection with the first standard parallel south; thence west along said parallel to the northeast corner of township six south, of range fifteen east; thence south along the line between ranges fifteen and sixteen east to the southeast corner of township seven south, of range fifteen east; thence west along the line between townships seven and eight south to the place of beginning, be, and the same is hereby, created into a new county to be known as, and called, Sweet Grass county. [*Act approved March 5, 1895.*]

Note.—County seat is Big Timber.

Holliday v. Sweet Grass Co., 19 Mont. 365; 48 Pac. 553. See note to section 26, article V, constitution.

The law creating Sweet Grass County contemplated the issuance of a warrant by Sweet Grass County to each of the counties within whose territory it was formerly included, for its share of the

debt of such counties. The commissioners of the respective counties were to meet on certain dates to adjust this debt, and each county was entitled to receive its warrant from Sweet Grass County on the date fixed for the adjustment of its portion thereof.

2833. (§ 4135.) *Boundaries of Yellowstone, Park and Meagher counties.*—The county boundaries of Yellowstone, Park and Meagher counties respectively, are hereby altered to conform to the boundaries as established by this act. And all that portion of the county of Meagher lying south of the line dividing townships six and seven north and lying east of the line dividing ranges eighteen and nineteen east is hereby bestowed on and made a part of Yellowstone county. [*Act approved March 5, 1895.*]

2834. *Broadwater county.*—That all that portion of the state of Montana embraced within the following boundaries shall be known as and shall be Broadwater County in the State of Montana, to-wit: Commencing in the middle of the main channel of the Missouri River opposite the mouth of Sixteen Mile Creek; thence easterly along the centre of the main channel of Sixteen mile Creek, four miles; thence due north to the northern boundary of Gallatin County, thence due east along said line to a point where said line intersects the main channel of Sixteen Mile Creek; thence in a northwesterly direction following the summit of the Big Belt Mountains to a point upon said summit where the same is crossed by the northern boundary of Township eleven North, range two east; thence due West to the main channel of the Missouri River; thence in a southeasterly direction along the center of the main channel of the Missouri River to the Northern boundary line of Jefferson County; thence due west along said line to a point where the same intersects the western boundary line of Township nine North, range one West; thence due south along the line between Townships in range one and two west of the principal meridian of Montana to a point where the said line intersects the Northern boundary line of Township three

North, range one West; thence along said line due east to the principal meridian of Montana; thence due south along said meridian to the Jefferson River; thence in an easterly direction along the center of the main channel of the Jefferson River to the center of the main channel of the Missouri River; thence in a northerly direction along the center of the main channel of the Missouri River to the point of beginning. [*Act approved February 9th, 1897, § 1.*] (5th Sess. 45.)

Note.—County seat is Townsend.

2835. *Boundaries of Jefferson and Meagher counties altered.*—The boundaries of Jefferson and Meagher Counties are hereby altered so as to conform to the boundaries of Broadwater County as established by this Act. [*Act approved February 9th, 1897, § 14.*] (5th Sess. 49.)

2836. *Powell County.*—That all that portion of the State of Montana, embraced within the following boundaries shall be known as, and shall be Powell County, in the State of Montana, to-wit: Beginning at the South-east corner of Section fourteen in Township six North, Range eight West; and running thence west by section lines to the boundary line between Granite and Deer Lodge Counties; thence north along said boundary to the intersection of the divide between Hell Gate and Big Blackfoot Rivers; thence Northwesterly along the summit of said divide to the intersections of the boundary line between Deer Lodge and Missoula Counties; thence due North along the present boundary line between Deer Lodge and Missoula Counties to latitude forty-seven degrees and thirty-five minutes North; thence east to the summit of the main range of the Rocky Mountains to the point where said crest is intersected by the west boundary line of Range Eleven west of the Montana Principal Meridian; thence south along the west boundary line of Townships twenty, nineteen, eighteen and seventeen north of said Range Eleven west to the southwest corner of Township seventeen north of Range Eleven west; thence east along the south boundary of Township Seventeen north of Range Eleven west to the northwest corner of Township Sixteen north of Range Eleven west; thence south along the west boundary line of Township Sixteen; north of Range Eleven west to the south-west corner of said Township Sixteen;—thence east along the south boundary line of Township Sixteen north of Range Eleven west to the southeast corner thereof; thence south along the west boundary line of Township Fifteen north of Range Ten west to the southwest corner of said Township Fifteen; thence along the south boundary line of said Township Fifteen to the southeast corner thereof; thence south along the west boundary line of Townships Fourteen and Thirteen north of Range Nine west to the southwest corner of said Township Thirteen; thence east along the south boundary line of Town-

ship Thirteen north of Ranges Nine and Eight west to the northwest corner of Township Twelve north of Range Seven West; thence south along the west boundary line of Townships Twelve and Eleven north of Range Seven west to the corner between Sections Eighteen and Nineteen of said Township Eleven north of Range Seven west; thence East along the south boundary lines of Sections Eighteen, Seventeen, Sixteen, Fifteen, Fourteen and Thirteen of said Township Eleven north of Range Seven west to the boundary line between said Township Eleven north of Range Seven west and Township Eleven north of Range Six west; thence south along the west boundary line of said Township Eleven north of Range Six west to the southwest corner of said Township Eleven north of Range Six west; thence east along the south boundary line of said Township Eleven north of Range Six west to the point of intersection with the summit of the main range of the Rocky Mountains; thence southerly along the summit of the main range of the Rocky Mountains to its intersection with the north boundary of Township Six North, Range eight West; thence east to the northeast corner of Section two in said Township Six North, Range Eight west; running South by Section lines to the place of beginning. That the boundaries of Deer Lodge County are hereby altered to conform to the boundaries of Powell County as established by this Act. [*Act approved January 31st, 1901, § 1.*] (7th Sess. 101-103.)

Note.—County seat is Deer Lodge.

2837. *Segregation of territory from Lewis and Clark county.*—All that portion of Lewis and Clark County embraced within the following Boundaries is hereby segregated from the said Lewis and Clark County and attached to and made a part of Powell County, to-wit: Beginning at the northwest corner of Township Sixteen north of Range Eleven west; thence running south along the west boundary line of Township Sixteen north of Range Eleven west to the southwest corner of said Township Sixteen; thence east along the south boundary line of Township Sixteen north of Range Eleven west to the south east corner thereof; thence south along the west boundary line of Township Fifteen north of Range Ten west to the southwest corner of said Township Fifteen; thence east along the south boundary line of said Township Fifteen to the south-east corner thereof; thence north along the east boundary line of Township Fifteen and Sixteen north of Range Ten west to the north east corner Township Sixteen north of Range Ten west; thence west along the north boundary line of Township Sixteen north of Ranges Ten and Eleven west to the place of beginning. [*Act approved March 6, 1903, § 1.*] (8th Sess. Chap. 106.)

2838. *Boundaries of Lewis and Clark County altered.*—The boundaries of Lewis and Clark County are hereby altered to con-

form to the boundaries of Powell County as established by this Act. [*Act approved March 6, 1903, § 3.*] (*8th Sess. Chap. 106.*)

2839. *Rosebud County.*—That all that portion of the State of Montana embraced within the following boundaries shall be known as, and shall be Rosebud County, to-wit: Beginning at a point where the township line, running between ranges Fourteen and Fifteen East, in the County of Custer, State of Montana; when surveyed and extended South, will intersect the northern boundary line of the State of Wyoming; thence North, along said township line, observing the jogs or offsets in said line, to its intersection, when surveyed, and extended, North, with the County line running East and West along, between Custer County and the County of Dawson, in said State of Montana; thence West along said County line to the middle of the main channel of the Musselshell River and the East boundary line of Fergus County; thence up the middle of said main channel of said river and along the meanderings thereof in a Southerly direction, to a point where the same is intersected by the County line running between the Counties of Yellowstone and Custer; thence in a South-easterly direction along said County line to the junction of the Yellowstone and Bighorn Rivers; thence up the middle of the main channel of the said Bighorn River and along the meanderings thereof in a Southeasterly direction to the intersection with the aforesaid Northern boundary of the State of Wyoming; thence East, along the boundary line to the point of beginning. The Town of Forsyth, situated within the boundaries above described, shall be the County Seat of said County of Rosebud until the permanent County Seat shall be designated in the mode and manner provided by law. [*Act approved February 11th, 1901, § 1.*] (*7th Sess. 97-8.*)

2840. *Boundaries of Custer county altered.*—The County boundaries of said Custer County are hereby altered to conform to the boundaries of said Rosebud County, as established by this Act. [*Act approved February 11th, 1901, § 11.*] (*7th Sess. 101.*)

2841. *Sanders county.*—That all that portion of the State of Montana embraced within the following boundaries shall be known as, and shall be, Sanders County, in the State of Montana, to-wit: Beginning at a point in the center of the main channel of the Pend d'Oreille River, where said river intersects the boundary line of the Counties of Missoula and Flathead; running thence southerly along the center of the main channel of the said Pend d'Oreille River to the mouth of Mission Creek; thence southerly in a straight line to a point one mile east of the Southeast corner of the present site of the Northern Pacific Depot in the Town of Dixon, where the said County line crosses the Northern Pacific Railway Track; thence due south to the summit of the Range of Mountains commonly called the Coeur d'Alene, said Mountains dividing the waters of the Missoula and Pend d'Oreille

Rivers; thence westerly along said summit of the Coeur d'Alene Mountains, to a point where said summit crosses the Township line between Townships Seventeen and Eighteen North; thence West along said Township line to the Southwest corner of Township Eighteen North, range Twenty-six West; thence North on said line between ranges Twenty-six and Twenty-seven to the summit of the Coeur d'Alene Mountains; thence westerly along the summit of said Coeur d'Alene Mountains to the boundary line between the State of Montana and the State of Idaho, and northerly along said boundary line to the south boundary of Flathead County, State of Montana; thence easterly along the boundary line of Flathead County to place of beginning. [*Act approved February 7, 1905, § 1.*] (9th Sess. Chap. 9.)

2842. *County seat.*—That the Town of Thompson Falls, situated within the boundaries above mentioned, shall be the county seat of said County of Sanders, until the county seat of said county shall be designated as hereinafter provided. And for the purpose of definitely fixing and creating the county seat of the County hereby created, the Board of County Commissioners of Sanders County shall cause to be inserted in the official ballots, when printed for the general election held the first Tuesday after the first Monday in November, A. D. 1906, at the foot of the names of the candidates, or nominees thereon, the following: "For the County Seat of Sanders County ———," and the electors, when voting at the said general election at the time hereinbefore mentioned, shall declare their vote upon said proposition by inserting in the blank space upon their ballots herein provided for, the name of some one town within said County of Sanders, and when the name of a town shall be so inserted in the said space by an elector, and the ballots have been cast as provided by law, the same shall be deemed a vote for the designated town as the place of the permanent county seat of Sanders County, and upon a canvass of the said ballots the town having the highest number of ballots shall be declared by the canvassing board the County Seat of Sanders County, which result shall be entered of record in the office of the County Clerk and Recorder of said Sanders County, and from the date of such declaration of result, the town selected shall be and remain, until lawfully changed, the County Seat of Sanders County. All laws of a general nature applicable to the several counties of the State of Montana, and the officers thereof, shall be made applicable to said County of Sanders, and the officers, who may hereafter be elected, or appointed, therein, except as otherwise provided in this Act. [*Act approved February 7, 1905, § 3.*] (9th Sess. Chap. 9.)

2843. *Boundaries of Missoula county altered.*—The county boundaries of Missoula County are hereby altered so as to conform to the boundaries of Sanders County as established by this Act. [*Act approved February 7, 1905, § 14.*] (9th Sess. Chap. 9.)

CHAPTER II.

GENERAL PROVISIONS RELATING TO COUNTIES.

- Section 2844. Surveys to definitely establish unsettled boundaries.*
- “ 2845. *Reports to governor on disagreement of commissioners.*
- “ 2846. *Governor to determine boundary thereupon or to order new surveys.*
- “ 2847. *Approved surveys to be conclusive.*
- “ 2848. *Previous surveys validated. Their force as evidence.*
- “ 2849. *Apportionment of cost of survey. Provisions for payment thereof.*
- “ 2850. *Collection of old taxes when county is divided or boundary altered.*
- “ 2851. *Removal of county seat. Petition.*
- “ 2852. *Submission to electors. Who are taxpayers.*
- “ 2853. *Election, notice of, how held and conducted.*
- “ 2854. *Voter to vote for place he prefers.*
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- “ 2856. *Place chosen to be county seat.*
- “ 2857. *Statement of result and notice transmitted.*
- “ 2858. *No second election to be held within four years.*
- “ 2859. *County seat may be removed from time to time.*
- “ 2860. *New counties entitled to records.*
- “ 2861. *County commissioners may have records transcribed.*
- “ 2862. *Commissioners' power to contract.*
- “ 2863. *Payment for transcribing.*
- “ 2864. *Certificate of transcript.*
- “ 2865. *Transcribed records to be filed.*
- “ 2866. *Effect of transcribed records.*
- “ 2867. *New counties. Transfer of actions affecting real estate.*
- “ 2868. *Same. Jurisdiction of court.*
- “ 2869. *Same. Fees of clerk.*

2844. (§ 4150.) *Surveys to definitely establish unsettled boundaries.*—All common boundaries and common corners of counties not adequately marked by natural objects or lines, or by surveys lawfully made, must be definitely established by surveys jointly made by the county surveyors of all the counties affected thereby, and approved by the boards of county commissioners of such counties.

2845. (§ 4151.) *Reports to governor on disagreement of commissioners.*—If the boards of county commissioners do not agree upon and finally approve the survey, each county surveyor

must make a report to the governor, with surveys, maps, notes, and explanations touching disputed points.

2846. (§ 4152.) *Governor to determine boundary thereupon or to order new surveys.*—Upon such reports the governor must finally determine and establish the common boundaries and corners, if he can collate a satisfactory description therefrom. If the reports are insufficient for such purpose, he must cause surveys to be made, and when approved by him the surveys so made establish such common boundaries and corners.

2847. (§ 4153.) *Approved surveys to be conclusive.*—All surveys finally approved under the provisions of this chapter are conclusive ascertainment of lines and corners included therein.

2848. (§ 4154.) *Previous surveys validated. Their force as evidence.*—All surveys and maps of boundary lines heretofore legally made and approved are declared valid and are prima facie evidence of the establishment of such lines, except so far as they are inconsistent with the provisions of this Code.

2849. (§ 4155.) *Apportionment of cost of survey. Provision for payment thereof.*—The cost of making such surveys must be apportioned equally among the counties interested and the board of county commissioners must audit the same, and the amounts must be paid out of the general county fund. [*The six next preceding sections are Code sections re-enacted by an act approved Feby. 27, 1895.*]

2850. (§ 4156.) *Collection of old taxes when county is divided or boundary altered.*—When a county is divided or a boundary is altered, all taxes levied before the division was made or boundary changed must be collected by the officers of, and belong to, the county in which the territory was situated before the division or change.

2851. *Removal of county seat. Petition.*—Whenever the inhabitants of any county of this State desire to remove the county seat of the county from the place where it is fixed by law or otherwise, to another place they may present a petition to the board of county commissioners of their county praying such removal, such place to be named in the petition and that an election be held to determine whether or not such removal must be made. [*Act approved March 14th, 1901, § 1.*] (7th Sess. 145.)

State v. Ravalli Co., 21 Mont. 470; 54 Pac. 939. A board of county commissioners exercises judicial functions when it decides whether a petition for the sub-

mission of the removal of the county seat, to the electors of the county, is signed by a sufficient number to require such submission.

2852. *Submission to electors. Who are taxpayers.*—If the petition is signed by a majority of the tax payers of such county. The board must at the next general election submit the question of removal to the electors of the county; provided that the term "tax payers" used in this section shall be deemed to mean "ad valorem tax payers," and that for the purpose of testing the sufficiency of any petition which may be presented to the county

commissioners as provided in this section, the county commissioners shall compare such petition with the poll books in the county clerk's office constituting the returns of the last election held in their county, for the purpose of ascertaining whether such petition bears the names of a majority of the voters listed therein; and they shall make a similar comparison of the names signed to the petition with those appearing upon the listed assessment roll of the county for the purpose of ascertaining whether the petition bears the names of a majority of the ad valorem tax-payers as listed in said assessment roll; and if such petition then shows that it has not been signed by a majority of the legal voters of the county who are ad valorem tax payers thereof, it shall be deemed insufficient, and the question of removal of the county seat shall not be submitted. [*Act approved March 14th, 1901, § 2.*] (*7th Sess. 146.*)

State v. Ravalli Co., 21 Mont. 470; 54 Pac. 939.

2853. (§ 4159.) *Election, notice of, how held and conducted.*—Notice of such election, clearly stating the object, must be given, and the election must be held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

2854. (§ 4160.) *Voter to vote for place he prefers.*—In voting on the question, each elector must vote for the place in the county which he prefers, by placing opposite the name of the place the mark X.

2855. *Publication of result.*—When the returns have been received and compared and the results ascertained by the board, if two thirds of all the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county, and by publishing a like notice in a newspaper printed in the county at least once a week for four weeks. [*Act approved March 14th, 1901, § 3.*] (*7th Sess. 146.*)

2856. (§ 4162.) *Place chosen to be county seat.*—In the notice provided for in the next preceding section, the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than ninety days after the election. After the day named in the notice, the place chosen is the county seat of the county.

2857. (§ 4163.) *Statement of result and notice transmitted.*—Whenever any election has been held, as provided for in the preceding sections of this chapter, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county clerk, and whenever the board gives the notice prescribed by § 2856 (4162), they must transmit a certified copy thereof to the secretary of state.

2858. (§ 4164.) *No second election to be held within four years.*—When an election has been held and a majority of the votes are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within four years thereafter.

2859. *County seat may be removed from time to time.*—When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this Chapter. [*Act approved March 14th, 1901, § 4.*] (7th Sess. 146.)

2860. (§ 4166.) *New counties entitled to records.*—Any county or counties of the state of Montana, that shall heretofore have been or may hereafter be formed from portions of another county, shall be entitled to have the county records affecting or relating to any and all property situate in the county segregated, transcribed from the books of the original county and made a part of the records of the county segregated. [*Act approved March 2, 1893.*]

State v. Coad, 23 Mont. 139; 57 Pac. 1095.

2861. (§ 4167.) *County commissioners may have records transcribed.*—It shall be the duty of the county commissioners of any county heretofore formed or that may be hereafter formed from part of another county, to have so much of the records of the original county as relates to the property situate within the segregated county transcribed as hereinafter provided. [*Act approved March 2, 1893.*]

2862. (§ 4168.) *Commissioners' power to contract.*—Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situate within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records, shall have access to all records of the county, or counties, from which segregated. [*Act approved March 2, 1893.*]

2863. (§ 4169.) *Payment for transcribing.*—Payment for transcribing such records shall be made by the county contracting therefor, by a warrant or warrants payable out of the general fund of such county. [*Act approved March 2, 1893.*]

2864. (§ 4170.) *Certificate of transcript.*—When the transcript of such records herein provided for shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken, and it shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the said transcript shall be delivered for comparison shall certify under oath that the said transcribed records are full, com-

plete and exact copies of the original records, and the said county clerk and recorder shall be entitled to six dollars per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate. [*Act approved March 2, 1893.*]

2865. (§ 4171.) *Transcribed records to be filed.*—All records so transcribed, when certified to as being full, complete and correct, shall be delivered to the county clerk and recorder of the segregated county, and shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county. [*Act approved March 2, 1893.*]

2866. (§ 4172.) *Effect of transcribed records.*—A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county, may be introduced in evidence and shall have the same force and effect as certified copies of original records. [*Act approved March 2, 1893.*]

2867. *New counties. Transfer of action affecting real estate.*—That in all counties heretofore created out of any other county, and in all counties that may be hereafter created, wherever there has been an action or proceeding begun, affecting any real property situate within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding, requesting the transfer of the files and papers and records of such action or proceeding to the office of the Clerk of the District Court of the new county, wherein such real property is situated, it shall be the duty of the Judge of the District Court, in which said action or proceeding was originally begun, to order that a transfer of all the files and papers of such action or proceeding be made to the office of the Clerk of the District Court of the new county in which such real property is situated; and when such an order of transfer is made, it shall be the duty of the Clerk of the District Court, wherein such action or proceeding was originally instituted, to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the Court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject matter of such action or proceeding, is situated; and that said Clerk of the District Court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county, and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred. [*Act approved February 19, 1907, § 1.*] (*10th Sess. Chap. 20.*)

2868. *Same. Jurisdiction of Court.*—That upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county heretofore created, or that may be hereafter created, in accordance with the provision of this Act, the District Court of such new county, in which such files and papers shall have been transferred, shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment or order that may have been entered therein, or for such other proceedings as may be necessary in such action or proceeding as the District Court had in the county wherein such action or proceeding was originally begun. [*Act approved February 19, 1907, § 2.*] (10th Sess. Chap. 20.)

2869. *Same. Fees of clerk.*—That the Clerk of the District Court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copy of the minutes and records entered in connection with such action or proceeding, no other fee than at the rate of twenty (20c) cents per folio for copies of minutes made by him, and fifty (50c) cents for certificate fee; that the Clerk of the District Court of the new county, to which such files and papers may be transferred in accordance with the provisions of this Act, shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding, or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law. [*Act approved February 19, 1907, § 3.*] (10th Sess. Chap. 20.)

TITLE II.

THE GOVERNMENT OF COUNTIES.

CHAPTER I. COUNTIES AS BODIES CORPORATE.

II. THE BOARD OF COUNTY COMMISSIONERS.

III. COUNTY OFFICERS.

IV. SALARIES AND FEES OF OFFICE.

V. OTHER COUNTY CHARGES.

CHAPTER I.

COUNTIES AS BODIES CORPORATE.

Section 2870. *Every county a body corporate.*

“ 2871. *Powers, how exercised.*

“ 2872. *Name and designation.*

“ 2873. *Enumeration of powers.*

“ 2874. *Restriction on loaning credit.*

“ 2875. *Restriction on temporary loans.*

“ 2876. *Limit of indebtedness.*

Section 2877. Service of process.

" 2878. *Witnesses and jurors, competency of.*

" 2879. *No execution to issue.*

" 2880. *Money illegally paid recovered.*

2870. (§ 4190.) *Every county a body corporate.*—Every county is a body politic and corporate, and as such has the power specified in this code, or in special statutes, and such powers as are necessarily implied from those expressed.

State v. Coad, 23 Mont. 137; 57 Pac. 1095.

Ind. P. Co. v. L. & C. Co., 30 Mont. 86; 75 Pac. 861. A county is one of the civil divisions of the state for political

and judicial purposes. It is *quasi* corporate in character, but has only such powers as are expressly provided by law, or are necessarily implied therefrom.

2871. (§ 4191.) *Powers, how exercised.*—Its powers can only be exercised by the board of county commissioners, or by agents, and officers acting under their authority, or authority of law.

2872. (§ 4192.) *Name and designation.*—The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property and duties, but this provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

2873. (§ 4193.) *Enumeration of powers.*—It has power:

1. To sue and be sued.
2. To purchase and hold lands within its limits.
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers.
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require.
5. To levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

Greeley v. Cascade Co., 22 Mont. 587; 57 Pac. 276.

Johnston v. Sacramento, 137 Cal. 207; 69 Pac. 962.

2874. (§ 4194.) *Restriction of loaning credit.*—No county must ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation, or become a subscriber to, or a shareholder in any company or corporation, or a joint owner with any person, company or corporation.

2875. (§ 4195.) *Restriction on temporary loans.*—All moneys borrowed by, or on behalf of any county, must be used only for the purpose specified in the law authorizing the loan.

2876. (§ 4196.) *Limit of indebtedness.*—No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five

per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. No county must incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law.

2877. (§ 4197.) *Service of process.*—In all legal proceedings against the county process must be served on the chairman of the board of county commissioners; and whenever an action or proceeding is commenced, it is the duty of the chairman forthwith to notify the county attorney thereof, and to lay before the board of county commissioners, at its next meeting, all the information he may have in regard to such action or proceeding.

2878. (§ 4198.) *Witnesses and jurors, competency of.*—On the trial of an action in which the county is interested, the inhabitants of such county are competent jurors, if otherwise competent and qualified according to law.

2879. (§ 4199.) *No execution to issue.*—When a judgment is rendered against the county, or against any county officer, in an action prosecuted against him in his name of office, when the same is to be paid by the county, no execution must issue upon the judgment; but the same must be paid as other county charges; and when so collected must be paid by the county treasurer to the proper person to whom the same is adjudged, upon the delivery of a proper voucher therefor.

Greeley v. Cascade Co., 22 Mont. 587; 57 Pac. 276.

2880. (§ 4200.) *Money illegally paid recovered.*—Whenever any board of county commissioners, without authority of law, orders any money paid as a salary, fees or for other purposes, and such money has been actually paid, or whenever the county clerk has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners, or by the law, and the same has been paid, the county attorney of such county must institute an action in the name of the county, against such person or persons, to recover the money so paid, and twenty per cent. damage for the use thereof, and no order of the board of county commissioners therefor is necessary in order to maintain such action; when the money has not been paid on such orders it is the duty of the county attorney to commence an action in the name of the county for restraining the payment of the same; and no order of the board of county commissioners therefor is necessary to maintain such action.

CHAPTER II.

THE BOARD OF COUNTY COMMISSIONERS.

- ARTICLE I. ORGANIZATION AND TERM OF BOARD.
- II. GENERAL PERMANENT POWERS.
- III. COUNTY FINANCES, BONDS AND WARRANTS.
- IV. COUNTY FAIRS.
- V. QUESTION OF RAISING MONEY TO BE SUBMITTED TO VOTE.
- VI. OTHER POWERS AND RESTRICTIONS.

ARTICLE I.

ORGANIZATION AND TERM OF BOARD.

- Section 2881. *Board, how composed.*
- “ 2882. *Qualifications.*
- “ 2883. *Vacancy, how filled.*
- “ 2884. *Bond.*
- “ 2885. *Chairman.*
- “ 2886. *Special meetings, how called.*
- “ 2887. *Meetings and records published.*
- “ 2888. *Clerk.*
- “ 2889. *Duties of clerk.*
- “ 2890. *Duties of board.*
- “ 2891. *Regular meetings.*
- “ 2892. *Other meetings.*
- “ 2893. *Compensation.*

2881. (§ 4210.) *Board, how composed.*—Each county must have a board of county commissioners, consisting of three members, whose term of office is four years.

Williams v. Commissioners, 28 Mont. 364; 72 Pac. 756. The county commissioners have power to bind the county only where they act as a legal entity.

A contract with an attorney for his services, entered into by the chairman of the board, individually, is not binding on the county.

2882. (§ 4211.) *Qualifications.*—Each member of a board of county commissioners must be an elector of the county he represents.

2883. (§ 4212.) *Vacancy, how filled.*—Whenever a vacancy occurs in the board of county commissioners, from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy by appointing for the unexpired term some qualified elector of the county in which the vacancy occurs.

2884. (§ 4213.) *Bond.*—Each person elected or appointed to the office of county commissioner must, before he enter upon the duties of his office, execute and file with the clerk of the district court of the county a bond, as provided in subdivision 11, § 2976 (4333) of this code. It is the duty of the district judge on

the first day in each term or session of court, in open court, to examine and inquire into the sufficiency of such bond, and order a new bond if found insufficient, and if found sufficient, his approval must be entered in the minutes of the court.

2885. (§ 4214.) *Chairman.*—The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

2886. (§ 4215.) *Special meetings, how called.*—If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board. The order must be entered of record, and five days' notice thereof must be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting.

Williams v. Commissioners, 28 Mont. 365; 72 Pac. 756.

2887. (§ 4216.) *Meetings and records published.*—All meetings of the board must be public, and the books, records and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

Williams v. Commissioners, 28 Mont. 365; 72 Pac. 756.

2888. (§ 4217.) *Clerk.*—The county clerk is the clerk of the board of county commissioners. The records must be signed by the chairman and the clerk.

2889. (§ 4218.) *Duties of clerk.*—The clerk of the board must:

1. Record all the proceedings of the board.
2. Make full entries of all its resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county.
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present.
4. Sign all orders made and warrants issued by order of the board for the payment of money, and certify the same to the county treasurer.
5. Record the reports of the county treasurer of the receipts and disbursements of the county.
6. Preserve and file all accounts acted upon by the board.
7. Preserve and file all petitions and applications for franchises, and record the action of the board thereon.
8. Record all orders levying taxes.

9. Designate upon every account allowed by the board, the amount allowed and he must deliver to any person who may demand it a certified copy of any record in his office, or any account on file therein.

10. As often as a new township is organized, or the boundaries of any township are altered, to immediately make out and transmit to the secretary of state a certified statement of the names and boundaries, and the boundaries of any township altered.

11. Perform all other duties required by law or any rule or order of the board.

2890. (§ 4219.) *Duties of board.*—The board of county commissioners must cause to be kept:

1. A "Minute Book," in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings.

2. A "Road Book," containing all proceedings and adjudications relating to the establishment, maintenance, change and discontinuance of roads, and road districts, or relating to road supervisors and their reports and accounts, as provided in § 2604* of this code.

3. A "Franchise Book," containing all franchises granted by them, for what purpose, the length of time, and to whom granted, the amount of bond and license tax required.

4. A "Warrant Book," in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee. [*Act approved March 18, 1895.*]

* Note.—This section, 2604, has been repealed. See § 1357.

2891. (§ 4220.) *Regular meetings.*—The board of county commissioners, except as herein otherwise provided, must meet at the county seat of their respective counties on the first Mondays of December, March, June and September of each year, and may sit not exceeding five days at each session, except the December session, at which time they may sit not exceeding eight days; but the board may, at any time, by giving at least five days' public notice, hold an extra session of not over two days' duration; *Provided*, That the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second and third classes. [*Act approved March 6, 1895.*]

Williams v. Commissioners, 28 Mont. 365; 72 Pac. 756.

2892. (§ 4221.) *Other meetings.*—Such other meetings must be held to canvass election returns, equalize taxation, and other purposes as are prescribed in this code or provided by the board.

2893. (§ 4222.) *Compensation*.—Each member of the board of county commissioners is entitled to eight dollars per day for each days' attendance on the sessions of the board, and ten cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence, and no other compensation must be allowed.

ARTICLE II.

GENERAL AND PERMANENT POWERS.

Section 2894. General and permanent powers.

- " 2895. *New townships, how organized.*
- " 2896. *Sheriff to attend meetings when directed.*
- " 2897. *Commissioners must contract, for what.*
- " 2898. *Records of water users' association.*
- " 2899. *County commissioners may establish public scales.*
- " 2900. *Capacity of scales.*
- " 2901. *Public weigher.*
- " 2902. *Duty of public weigher.*
- " 2903. *Rules and regulations.*
- " 2904. *False receipts.*

2894. (§ 4230.) *General and permanent powers*.—The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safe keeping, management or disbursement of the public revenues; see that they faithfully perform their duties; direct prosecutions for delinquencies; and when necessary, require them to renew their official bonds, to make reports, and to present their books and accounts for inspection.

2. To divide the counties into townships, school, road and other districts required by law; change the same and create others as convenience requires.

3. To establish, abolish, and change election precincts, and to appoint judges of election, canvass all election returns, declare the result, and issue certificates thereof.

4. To lay out, maintain, control, and manage public highways, ferries, and bridges, within the county, and levy such tax therefor as required by law.

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and a tax on property not exceeding one-fifth of one per cent., or either of such levies when both are not required.

6. To provide a farm for the support of the poor of the county, and make regulations for working the same.

7. When there are no necessary county buildings, to provide suitable rooms for county purposes.

8. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county, preserve, take care of, manage and control the same; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

9. To cause to be erected and furnished a court house, jail, hospital, and such other public buildings as may be necessary.

10. To sell at public auction at the court house door, after thirty days' previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder for cash any property, real or personal, belonging to the county, paying the proceeds into the county treasury for the use of the county.

11. At the regular meetings of the board to examine and allow the accounts of all officers having the care, management, collection or disbursement of moneys belonging to the county, or appropriated by law or otherwise for its use and benefit.

12. At the regular meetings of the board to examine, settle and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same.

13. To levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding sixteen mills on each dollar of the assessed valuation for any one year; and to levy such taxes as are required to be levied by special or local statutes.

14. To equalize the assessments.

15. To direct and control the prosecution and defense of all suits to which the county is a party.

16. To insure the county buildings in the name of and for the benefit of the county.

17. To grant licenses for keeping ferries and such other licenses as are provided by law.

18. To fix the compensation of all county officers, not otherwise in this code or by general or special law fixed, and provide for the payment of the same.

19. To fill by appointment all vacancies that may occur in county, township or precinct offices, except in the office of county commissioner.

20. To contract for the county printing, and provide books and stationery for county officers.

21. At the adjournment of each session of the board to cause to be published in a newspaper, or otherwise, a fair statement of all its proceedings, and annually a statement of the financial condition of the county. [*Subdivision 21. Act approved March 6, 1895.*]

22. To represent the county and have the care of county property, and the management of the business and concerns of the county in all cases where no other provision is made by law.

23. To make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary.

24. To adopt a seal for the board, a description and impression whereof must be filed by the clerk in the offices of the county clerk and secretary of state.

25. To perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

26. To borrow money upon the credit of the county to meet current expenses, if the county revenue is insufficient.

27. To issue on the credit of the County, Coupon Bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings and for the construction of bridges and highways, in accordance with the provisions of Articles III and IV, Chapter II, Title II, Part IV of the Political Code. [*Subdivision 27 is part of Act approved February 27, 1905, 1.*] (9th Sess. Chap. 40.)

State v. Coad, 23 Mont. 137; 57 Pac. 1095. A county is not, in a strict sense, a municipal corporation, but as its board of commissioners has no power other than is derived expressly or by necessary implication from the statute defining their powers, it comes within the rules of law applicable to such corporations.

Williams v. Commissioners, 28 Mont. 366; 72 Pac. 756.

Yegen v. Board, 34 Mont. 86; 85 Pac. 743. The board of county commissioners

does not have the power to erect and maintain a detention hospital for persons affected with contagious or pestilential diseases, at the expense of the county.

Subdivision 7 of this section refers to such buildings as may be required for ordinary county purposes.

Subdivision 9 refers to a hospital for the indigent sick.

Johnston v. Sacramento, Subdv. 4, 137 Cal. 206; 69 Pac. 962.

2895. (§ 4231.) *New townships, how organized.*—The board must not set off or organize any new township unless a petition is presented to the board, signed by at least fifty citizens resident therein.

2896. (§ 4232.) *Sheriff to attend meetings when directed.*—The board has the power to direct the sheriff to attend in person or by deputy all the meetings of the board, to preserve order, and serve notices or citations, as directed by the board. And the board has the same power to punish for contempt, by fine and imprison-

ment, as is now exercised and allowed by law to district courts to require obedience to their citations and decorum in their meetings.

2897. (§ 4233.) *Commissioners must contract, for what.*—It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper of general circulation, published within the county, and having been published continuously in such county at least six months immediately preceding the awarding of such contract to do and perform all the printing for which said counties may be chargeable, including all legal advertising required by law to be made, blanks, blank books and official publications, at not exceeding the following prices: For every folio of one hundred words, or fraction thereof, not exceeding one dollar and fifty cents shall be paid for the first insertion thereof, and fifty cents per folio of one hundred words, for each subsequent insertion required by law to be made, and three figures or fraction thereof shall count as one word. For ruled and figure work, not exceeding two dollars per folio of one hundred words or fraction thereof, and fifty cents per folio of one hundred words for each subsequent insertion thereof, required by law to be made. That for the purpose of establishing a basis of measurement, the amount of space occupied by one hundred words, set in solid nonpareil type, thirteen ems pica in width, shall constitute a folio in measuring rule and figure or other open work. Printed blanks required by law to be printed for the several counties shall be furnished at the following rates: For blanks cut from flat cap paper, measuring fourteen by seventeen inches in size, and weighing not less than sixteen pounds to the ream, as follows: For eight sheets printed on one side, two dollars and fifty cents for the first one hundred copies, and twenty-five cents for each subsequent one hundred copies, and twenty cents additional per one hundred copies, if bound. For eight sheets, printed on both sides, three dollars and seventy-five cents for the first one hundred copies, and forty cents for each subsequent one hundred copies. For quarter sheets printed on one side, three dollars and twenty-five cents for the first one hundred copies, and thirty-five cents for each subsequent one hundred copies, and thirty cents additional per hundred, if bound. For quarter sheets, printed on both sides, four dollars and seventy-five cents for the first one hundred copies, and fifty cents for each subsequent one hundred copies. For half sheets printed on one side, six dollars for the first one hundred copies, and fifty-five cents for each subsequent one hundred copies, and fifty cents for each additional one hundred, if bound. For half sheets, printed on both sides, nine dollars and seventy-five cents for the first one hundred copies, and sixty-five cents for each subsequent one hundred

copies. For whole sheets, printed on one side, nine dollars for the first one hundred copies, and eighty cents for each subsequent one hundred copies, and fifty-five cents additional per hundred, if bound. For whole sheets, printed on both sides, fifteen dollars for the first one hundred copies, and one dollar for each subsequent one hundred copies. When any number of blanks enumerated in the above schedule exceeding one thousand shall be ordered, the price shall be twenty per cent. less than the prices named in the above schedule for each subsequent one hundred copies. County warrants with stubs, printed on bond paper, twenty dollars per thousand. Road tax receipts, special poor tax, or other blanks that are required to be numbered and perforated, two dollars and fifty cents per thousand extra. For blank books, medium, thirteen by eighteen inches, two dollars and seventy-five cents per quire. Double cap, fourteen by seventeen inches, two dollars and seventy-five cents per quire. Demi, ten by sixteen inches, two dollars and twenty-five cents per quire. Cap, eight by fourteen inches, one dollar and seventy-five cents per quire. The above prices are for books and of six or more quires, eighty pages to the quire. For books of less than six quires, no more than twelve per cent. shall be added to the above prices. Books with printed headings, one dollar and twenty-five cents per quire additional for each and every form, and books with full printed page three dollars and fifty cents additional for each form. Twelve per cent. additional for books of less than six quires. All other blanks, books or printing not herein provided for shall be furnished and paid for at not to exceed the rates herein provided for similar blanks or printing. The contract shall be let to the newspaper that in the judgment of the county commissioners shall be most suitable for performing said work; *Provided*, That the county commissioners shall require of any contractor to do such county printing a good and sufficient undertaking in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties conditioned to the effect that said contractor will faithfully perform all the conditions of said contract in accordance with the terms thereof or in default thereof said sureties shall pay to the said county the sum mentioned in said undertaking as the penalty thereof; *Provided*, That nothing in this act shall be construed so as to compel the acceptance of unsatisfactory work; *also provided*, however, that this requirement shall not affect any contract made prior to the passage of this act. No such contract for printing shall extend for more than two years. All newspapers which may receive any contract for printing under this act which may not be able to execute any part of such contract shall be required to sub-let such contract or portion of contract to some newspaper or printing establishment within the state, which may be competent to execute such

work, at not to exceed the rates herein mentioned. [*Act approved March 2, 1895.*]

Stevens v. Ravalli Co., 25 Mont. 311; 64 Pac. 878. The price to be paid for printing, perforating and numbering road tax receipts is the price for ordinary blanks, with additional compensation for perforating and numbering, and not the special rate for county warrants. The charge for perforating and numbering blanks is not reduced because the num-

ber exceeds 1000. The printer is not entitled to a special price for blanks not capable of being cut from flat-cap paper. A newspaper publishing notices in larger type than is specified in this section is only allowed compensation for the number of folios which such notices would have required, if printed in nonpareil.

2898. *Records of Water Users' Associations.*—The county commissioners of every county where Water Users' Associations, organized in conformity with the laws of the United States, under the Reclamation Act, have organized, or wherein such association shall hereafter organize, are required to furnish the county recorder, for the proper recording of such articles of incorporation and stock certificates of such companies, books to conform to such books and stock certificates as used by the Secretary of the Water Users' Association, containing printed blank forms of such articles of incorporation and stock certificates, in accordance with the laws of the United States and of the State of Montana, such forms to be prepared by the Attorney General and used by the county recorder for the recording of such articles of incorporation and stock certificates. The county recorder shall charge fifty cents for recording each stock certificate. [*Act approved March 2, 1905, § 1.*] (9th Sess. Chap. 68.)

2899. *County Commissioners may establish public scales.*—The Board of County Commissioners of any county is hereby authorized, in its discretion, when petitioned by twenty-five or more residents and freeholders of the county, to establish and locate public scales at any suitable location selected by the County Commissioners within the county. [*Act approved February 20, 1905, § 1.*] (9th Sess. Chap. 22.)

2900. *Capacity of scales.*—Such Scales shall be purchased by the county, and be of not less than five tons weighing capacity, and shall be provided with glass or open front which can be observed by the one weighing without dismounting from wagon, and shall be the property of the county, and at all times be under its control and subject to the will of the County Commissioners. [*Act approved February 20, 1905, § 2.*] (9th Sess. Chap. 22.)

2901. *Public weigher.*—The Board of County Commissioners shall appoint at each place where public scales are established by them, a public weigher, who shall have the custody and care of such property, and who shall give a bond to the county in the sum of \$500.00, conditioned for the safe keeping of the same, and for the faithful and impartial discharge of the duties incident to his trust in office. [*Act approved February 20, 1905, § 3.*] (9th Sess. Chap. 22.)

2902. *Duty of public weigher.*—It shall be the duty of each public weigher to keep a stub record of all weighing done by him, which record and the receipt issued by such public weigher shall show for whom property was weighed and the character and kind thereof, and shall constitute prima facie evidence of the facts therein contained; and all such stub records, or other records which the county commissioners may require him to keep, shall at all times be open to public inspection during business hours, between 7:00 A. M. and 6:00 P. M. of any day save and except Sundays and legal holidays, and such public weigher shall file a sworn statement with the County Recorder of the County, as prescribed by the County Commissioners, thereof, which statement shall show the date and character or kind of property weighed, for whom weighed, and a complete statement of all fees collected. [Act approved February 20, 1905, § 4.] (9th Sess. Chap. 22.)

2903. *Rules and regulations.*—Such public weigher shall receive not to exceed ten cents for each receipt issued by him, and shall be governed by such rules and regulations as may be from time to time prescribed or adopted by the Board of County Commissioners, and he may be removed at any time by such Board. [Act approved February 20, 1905, § 5.] (9th Sess. Chap. 22.)

2904. *False receipts.*—Any public weigher, under the provisions of this act, who shall make any false or fraudulent receipt of any weighing done by him, or shall be guilty of any collusion with any other person or persons for the purpose of deceiving any person or persons in regard to the correctness of weights, or who shall fail to comply with the requirements of the preceding Section, is guilty of a misdemeanor. [Act approved February 20, 1905, § 6.] (9th Sess. Chap. 22.)

ARTICLE III.

COUNTY FINANCES, BONDS AND WARRANTS.

Section 2905. *Refunding bonds.*

“ 2906. *Form and execution of bond.*

“ 2907. *Notice of sale to be published.*

“ 2908. *Proceeds of sale, what to be done with.*

“ 2909. *Redeemed bonds, etc., to be canceled.*

“ 2910. *County commissioners to print bonds.*

“ 2911. *Notice of redemption to be published.*

“ 2912. *Bond fund to be provided.*

“ 2913. *County treasurer to pay bonds and interest.*

“ 2914. *Record to be kept.*

“ 2915. *County warrants. Interest.*

“ 2916. *Lost bond or warrant.*

“ 2917. *Indemnity to be given.*

“ 2918. *Duplicate bonds, how given.*

“ 2919. *What notice imparted.*

Section 2920. Duty of county treasurer in reference to lost bonds.

- " 2921. *County commissioners to transfer funds.*
- " 2922. *Contingent fund, how made.*
- " 2923. *Surplus of contingent fund.*
- " 2924. *Certain bonds legalized.*
- " 2925. *Same.*
- " 2926. *County bonds and warrants issued for highways and bridges legalized.*

2905. *Refunding bonds.*—The Board of County Commissioners has the authority to issue, on the credit of the county, coupon bonds to an amount sufficient to enable it to redeem all legal outstanding bonds, warrants or orders, for the purpose of necessary building sites, and for the construction of necessary public buildings, public highways and bridges, not exceeding in the aggregate, including outstanding bonded indebtedness, five per centum on the value of the taxable property within such County to be ascertained by the last assessment for State and County taxes, previous to issuing such Bonds. Such Bonds are redeemable and payable at such times, not longer than twenty years after the date thereof, as the Board determines, and the interest which such bonds bear must be fixed by the Board, not exceeding six per centum per annum, and to be represented by interest coupons, payable semi-annually on the first days of January and July of each year. [*Act approved February 27, 1905, § 1.*] (*9th Sess. Chap. 41.*)

2906. *Form and execution of bond.*—The Board must fix the denomination of each bond, issued under this Article, and prescribe the form thereof; and each bond and all coupons attached thereto must be signed by the Chairman of the Board and the Treasurer of the County; and each bond and coupon must be countersigned by the County Clerk, and each bond sealed by him. *Provided*, a lithographic or engraved fac-simile of the signatures of the Chairman of the Board, Treasurer and County Clerk may be affixed to the coupons, only, when so recited in the bond. Each bond issued must be registered by the County Treasurer in a book provided for that purpose, which must show the number and amount of each bond, and when and to whom issued. [*Act approved February 22nd, 1899, § 1.*] (*6th Sess. 133.*)

2907. (§ 4242.) *Notice of sale to be published.*—When the board issues any bonds authorized by this article it is its duty to sell the same, and give notice by advertisement in some newspaper published in the county, or, if there be no newspaper published in the county, then in any newspaper published in an adjoining county, and also in one or more newspapers published in the city of New York, for a period of not less than thirty days prior to the time said bonds are to be sold; such advertisement

must be for sealed proposals, which must state the amount of such bonds for sale, and the person offering the highest price therefor is entitled to receive the amount of such bonds which he offers to buy; but no bonds must be sold for any price less than the par value thereof.

2908. (§ 4243.) *Proceeds of sale, what to be done with.*—The proceeds derived from the sale of bonds authorized to be issued by this article must be paid into the county treasury, and must be applied to the payment of the legal bonds, warrants, or orders of the county which may be outstanding or unpaid, in the order in which said bonds, warrants, or orders become due. But the board may at any regular meeting exchange any bonds issued under the provisions of this article for any outstanding county bonds then due, and for any legal county warrants or orders of the county issued prior to a day to be fixed by the board and entered of record in the minutes of their proceedings. The exchange, when made, must be dollar for dollar, with accrued interest thereon. And the board may advertise the privilege to so exchange bonds then due and warrants and orders of the county issued prior to the day so fixed in some newspaper printed and published in the county, or, if there be no newspaper published in the county, then in a newspaper published in an adjoining county, for such period as the board designates.

2909. (§ 4244.) *Redeemed bonds, etc., to be canceled.*—All bonds, coupons, warrants or orders which are called in or redeemed, or paid under the provisions of this article, and in lieu of which coupon bonds are issued must be canceled in the same manner in which county warrants are canceled, and the board must preserve, in a book provided for that purpose, a correct description of such bonds, coupons, warrants, or orders, so canceled, and the amount of the principal and interest paid to redeem the same, and a copy of such record must be transmitted to the county treasurer.

2910. (§ 4245.) *County commissioners to print bonds.*—The board must cause suitable bonds, with coupons attached, to be printed or lithographed, and must pay therefor out of any moneys in the treasury of such county not otherwise appropriated.

2911. (§ 4246.) *Notice of redemption to be published.*—When the board is prepared to redeem any bonds or pay any legal outstanding indebtedness of the county, it must cause a notice to be published in the newspapers mentioned in § 2907 (4242) of this code, that within thirty days from the date of such notice it will redeem or pay such indebtedness, briefly describing the same; such notice must be sent by mail to the owner or holder of such indebtedness, in case the board has notice or knowledge of the address of such owner or holder; and if at the expiration of the said thirty days the holder, or holders, fail or neglect to pre-

sent the same for payment, interest thereon must cease; but the county treasurer must at all times thereafter be ready to redeem the same on presentation.

2912. (§ 4247.) *Bond fund to be provided.*—The board issuing bonds under the provisions of this article must, annually, at the time of levying taxes, levy upon the taxable property, in addition to all other taxes, a sum sufficient to pay the interest on all the bonds issued under the provisions of this article, as the same becomes due, and also a sum sufficient to provide for the redemption of the bonds as the same become due, or are called in for payment, according to the conditions thereof, and such tax when collected must be set apart in a fund known as the “bond fund,” and used for no other purpose than the payment of such bonds and interest accruing thereon.

2913. (§ 4248.) *County treasurer to pay bonds and interest.*—The county treasurer must pay the interest upon the bonds authorized to be issued under the provisions of this article when the same become due, on the presentation to him of the proper coupons therefor; and all bonds and coupons which may be paid by the county treasurer must be returned by the treasurer to the county clerk at his next settlement after such payment; and the county clerk must cancel said bonds and coupons in the manner provided by law for the cancellation of county warrants.

2914. (§ 4249.) *Record to be kept.*—It is the duty of the county treasurer, upon taking up county orders for the purpose in this article mentioned, to keep a record of the same, to cancel said orders and to make a report thereof to the board at each regular meeting of the board and to the county clerk.

2915. *County warrants. Interest.*—All county warrants after having been presented to the County Treasurer and by him endorsed, “Not paid for want of funds in the Treasury,” from and after the date of presentation and endorsement, draw interest at the rate of six (6) per cent per annum. [*Act approved February 20th, 1899, § 1.*] (6th Sess. 99.)

2916. (§ 4251.) *Lost bond or warrant.*—The board is authorized, upon satisfactory proof, that any original bond, warrant or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant or coupon, a duplicate thereof, which will take the place in order of registration and payment of such original bond, warrant or coupon, and in all cases supersede and take the place of such original.

2917. (§ 4252.) *Indemnity to be given.*—Before issuing such duplicate bond, warrant or coupon the board must require the person demanding the same to execute and deliver to the treasurer of the county a bond, payable to the county, in double the amount of the bond, warrant or coupon, with at least two good and sufficient sureties, who must be required to justify as in case of at-

tachment, the conditions of such bond being that of the principal and sureties therein will indemnify and save harmless the county from all loss, costs or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant or coupon, all moneys received upon such duplicate.

2918. (§ 4253.) *Duplicate bonds, how given.*—The chairman of the board, at the time of issuing any duplicate bond, warrant or coupon, must write across or upon the face thereof the word "Duplicate," in red ink.

2919. (§ 4254.) *What notice imparted.*—The word "Duplicate" upon any bond, warrant or coupon, imparts notice to all persons that the same is issued subject to the provisions of this article.

2920. (§ 4255.) *Duty of county treasurer in reference to lost bonds.*—It is the duty of the county treasurer, upon the production to him of any original bond, warrant or coupon, by the lawful owner or holder thereof, to assign by indorsement and to deliver to him the bond mentioned in § 2917 (4252), and such owner or holder may maintain an action in his own name upon such bond for the recovery of any moneys paid upon such duplicate, but the delivery of such bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying bond to pay the same.

2921. (§ 4256.) *County commissioners to transfer funds.*—The board is authorized to transfer all surplus moneys that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county, but no moneys belonging to the school fund must be taken therefrom except for school purposes.

2922. (§ 4257.) *Contingent fund, how made.*—The board must set aside a sum not less than one nor more than twenty-five per cent. of the county fund, annually, which is known as the "contingent fund," to defray incidental expenses of the county; and if a surplus of such contingent fund so set aside remains it must be paid out on registered warrants as other county funds are, at the expiration of each quarterly settlement.

2923. (§ 4258.) *Surplus of contingent fund.*—If a surplus remains in the contingent fund at the end of the year such surplus must be transferred to the general fund.

2924. (§ 4259.) *Certain bonds legalized.*—That all bonds issued previous to February 1st, 1895, by any county of the state of Montana, by virtue and under authority of chapter XL., of the fifth division of the compiled statutes of Montana, and all acts

and parts of acts amendatory thereof, for the purpose of funding or refunding any outstanding indebtedness of such county, be, and the same are hereby, legalized and declared to be valid and binding obligations of the respective counties issuing such bonds; and all elections held for the purpose of issuing bonds under said chapter, or any acts or parts of acts amendatory thereof, or under the act approved March 4th, 1891, entitled "An act to amend §§ 790, 795, 796 and 808 of the fifth division of the compiled statutes of Montana," are hereby legalized and declared to be valid. And all bonds authorized to be issued under said chapter XL., or any act or acts amendatory thereof, or under said act approved March 4th, 1891, and also duly authorized by an election held pursuant to the provisions of the statutes of the state of Montana and said act approved March 4th, 1891, are hereby authorized to be issued, and are hereby made legal and binding obligations of their respective counties issuing such bonds; *Provided, however*, that this act shall only apply to such issue or issues of the bonds which, at the time of the issuance thereof, together with the existing indebtedness of the respective counties did, and does not, exceed the constitutional limit of the total indebtedness of such county. [*Act approved March 18, 1895.*]

2925. (§ 4260.) *Same.*—That all bonds issued previous to January fifth, 1893, by any county of the state of Montana (by virtue and authority of chapter XL. of the fifth division of the compiled statutes of Montana, and all acts and parts of acts amendatory thereof), for the purpose of funding or refunding outstanding indebtedness of such county, be, and the same are hereby, legalized and declared to be valid and binding obligations of the respective county issuing the said bonds; *Provided, however*, that this act shall apply only to such issue or issues of bonds, which at the time of issuance thereof, together with other existing indebtedness of the respective county, did not exceed the constitutional limit of the total indebtedness of such county. [*Act approved March 2, 1893.*]

2926. *County bonds and warrants issued for highways and bridges legalized.*—That all warrants which have been heretofore issued by any county in this State, under authority of the Board of County Commissioners of the County, for the purpose of paying for the construction of highways, bridges or public buildings, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid and binding obligations of the respective counties issuing the same; and all bonds heretofore issued by the Board of County Commissioners of the County, pursuant to an election regularly held for the purpose of authorizing an issue of bonds for any of said purposes, or for the purpose of redeeming any of said warrants so issued, and not in excess of the constitutional limit of indebtedness, are hereby legalized and declared to be valid. [*Act approved February 12, 1907, § 1.*] (*10th Sess. Chap. 10.*)

ARTICLE IV.

COUNTY FAIRS.

Section 2927. County fair commission.

“ 2928. *Appropriation.*

“ 2929. *Compensation of commission.*

“ 2930. *Duty of commission.*

“ 2931. *Organization of commission. Appropriations for county fairs.*

2927. *County fair commission.*—The Board of County Commissioners of each County of Montana may at their regular meeting in March of each year, appoint from among the electors of their respective counties five persons to constitute a County Agricultural Fair Commission. Said persons shall be responsible men who are well qualified to perform the duties of organizing and successfully carrying on a county fair. In case there is in any county a Fair Association, the Board of County Commissioners shall appoint said Fair Commission from the members of said Fair Association, giving the preference in said appointments to the officers of said Fair Association. [*Act approved March 5th, 1903, § 1.*] (8th Sess. Chap. 67.)

2928. *Appropriation.*—There may be appropriated by the Board of County Commissioners of their respective counties of this State out of the general fund in the county treasury, the sum of one thousand dollars per year, for the purpose of paying the expenses of the County Agricultural Fair to be held in each county aforesaid. Said County Agricultural Fair shall be held between the 20th day of August and the 20th day of October of each year. Said one thousand dollars shall be expended by said Fair Commission in the payment of the expenses of conducting such Fair; *provided, however*, no portion of said one thousand dollars shall be expended for either or any of the following purposes, to-wit: horse racing, contests of speed, or any shows or amusements of any kind whatever. [*Act approved March 5th, 1903, § 2.*] (8th Sess. Chap. 67.)

2929. *Compensation of commission.*—Each member of said Commission shall receive the sum of \$25.00 and no more as compensation for their services as members of said Commission, and for all services in connection with said Fair. [*Act approved March 5th, 1903, § 3.*] (8th Sess. Chap. 67.)

2930. *Duty of commission.*—Said Commission shall do all things necessary to hold a successful County Agricultural Fair in their respective counties. [*Act approved March 5th, 1903, § 4.*] (8th Sess. Chap. 67.)

2931. *Organization of commission.*—Said Commission shall organize by electing one of its members president, one of its members secretary, and one of its members treasurer. Said Treasurer shall give bonds in such sums as may be required by the Board of County Commissioners, and said sum of one thousand dollars shall be appropriated out of the County Treasury by the Board of County Commissioners, as aforesaid, shall be paid to said Treasurer and shall be paid out by him on orders signed by the President and secretary of said Fair Commission. [*Act approved March 5th, 1903, § 5.*] (8th Sess. Chap. 67.)

2932. *Appropriations for county fairs.*—That the Board of County Commissioners in each county is hereby authorized to appropriate, each year, the sum of one thousand (\$1000.00) dollars, or so much thereof as may be necessary, out of the general fund of the county, for the purpose of defraying the expenses of collecting, transporting and taking care of any exhibit from such county at the State Fair, such money to be expended under the direction of the board. [*Act approved March 8, 1907.*] (10th Sess. Chap. 165.)

ARTICLE V.

QUESTIONS OF RAISING MONEY TO BE SUBMITTED TO A VOTE.

Section 2933. Commissioners not to borrow money except as provided in this article.

“ 2934. *Commissioners to determine amount necessary.*

“ 2935. *Notice of election to be given.*

“ 2936. *Ballots, what to contain.*

“ 2937. *When loan may be made.*

“ 2938. *Form of ballots. Voting.*

2933. (§ 4270.) *Commissioners not to borrow money except as provided in this article.*—The board of county commissioners must not borrow money for any of the purposes mentioned in this title, or for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860.

2934. (§ 4271.) *Commissioners to determine amount necessary.*—Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860.

2935. (§ 4272.) *Notice of election to be given.*—Notice of the election clearly stating the amount to be raised, and the object

of the loan, must be given, and the election held and conducted, and the returns made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860. This section does not refer to the printed form of the ballot, but requires that the provisions of the general election law be followed.

2936. (§ 4273.) *Ballots, what to contain.*—There must be written or printed on the ballots the words “for the loan” and “against the loan,” and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860. In voting on the question whether the county should issue bonds to build a court house, the words “For the Loan” and “Against the Loan”, were printed on the ballots, and these ballots were sufficient without specifying the nature and purpose of the proposed loan.

2937. (§ 4274.) *When loan may be made.*—If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds, or otherwise, as may seem best for the interests of the county.

2938. *Form of ballots. Voting.*—That hereafter whenever, in due course of law, in the manner and form required by law and according to the provisions and requirements of law, any question or proposition of or relating to bonded indebtedness, or of issuing bonds or of refunding, increasing or creating a bonded indebtedness, is submitted, ordered submitted or to be submitted to the electors of any county, at a general or other election, when, at the same time, candidates for national, state or county office or offices are to be voted upon or for, by the qualified electors of such county, such question or proposition, relating to bonds or bonded indebtedness, shall not be placed or printed upon the official ballots furnished electors at such election for the purpose of voting for candidates for any office or offices and containing the names of candidates for office or offices to be voted for at such election; but the county commissioners shall authorize and the county clerk shall have printed and furnished to election judges and officials, in each voting precinct of such county, separate ballots therefor, equal in number to the official ballots so furnished and containing the names of such candidates for office. Said separate ballots shall be white in color and of convenient size, being only large enough to contain the printing herein required to be done and placed thereon, and shall have printed thereon in fair sized, legible type and black ink, in one line, or more, as required, the words “For” said bonding proposition (stating it and the terms thereof explicitly and at length) and thereunder the words “Against” said bonding proposition (Stating it and the terms thereof explicitly and at length, in like manner, as above); and there shall be before the word “For” and before the word “Against,” each, a square space of sufficient size

to place a plain cross or X therein and such arrangement shall be in this manner:

<input type="checkbox"/>	For (stating propositions.)
<input type="checkbox"/>	Against (stating propositions.)

Such separate ballots shall be kept, stamped, given out, received, counted, returned and disposed of by election judges in like manner as other official ballots herein referred to. Each qualified elector, offering to vote and permitted to vote, shall, at the time he is offered by the election judges an official ballot bearing the names of candidates for office, be handed one of the separate ballots above described and he may then and there, in a booth as provided by law, and not otherwise, vote on such separate ballot for or against said proposition by placing a cross or X before the word "for" or the word "against," in the vacant square provided therefor; and such separate ballot shall be returned to the election judges by the voter, with said other official ballot, if the voter chooses to vote for candidates for office and is entitled to do so. The election judges shall deposit said separate ballot on the bonding proposition, separate from the voter's other official ballot, in the ballot box. [Act approved March 14th, 1901, § 1.] (7th Sess. 13-15.)

ARTICLE VI.

OTHER POWERS AND RESTRICTIONS.

- Section 2939. *Provide appliances to hold elections.*
- " 2940. *Certificates issued as board of canvassers.*
- " 2941. *Power to require attendance of witnesses.*
- " 2942. *Examination of witnesses.*
- " 2943. *Officers and witnesses not to be prepaid.*
- " 2944. *County officer not to present certain claims against county.*
- " 2945. *All claims must be itemized.*
- " 2946. *Account must be filed prior to session.*
- " 2947. *Appeals.*
- " 2948. *Duty of clerk on appeals.*
- " 2949. *What warrants must specify. How presented and paid.*
- " 2950. *Annual examination of accounts by board.*
- " 2951. *Commissioners not to be interested.*
- " 2952. *Claims in favor of county commissioners.*
- " 2953. *Annual report of county clerk.*
- " 2954. *What may be recovered on the bond.*

2939. (§ 4280.) *Provide appliances to hold elections.*—The board of county commissioners must provide all poll lists, poll books, blank returns and certificates, proclamations of elections, and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

2940. (§ 4281.) *Certificates issued as board of canvassers.*—Whenever, as canvassers, the board of county commissioners declare the result of any election held in the county, certificates must be by the clerk of the board issued to all persons elected to a county office or to a township or district office therein, and such other certificates must be made out and transmitted as required by the title relative to "Elections."

2941. (§ 4282.) *Power to require attendance of witnesses.*—The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

2942. (§ 4283.) *Examination of witnesses.*—A witness is bound to attend, when served, and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena, or to an order to attend or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of chapter II., title III., part IV., of the Code of Civil Procedure.

2943. (§ 4284.) *Officers and witnesses not to be prepaid.*—Neither the officers serving subpoenas, nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas, and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

2944. (§ 4285.) *County officer not to present certain claims against county.*—No county officer must, except for his own service, present any claim, account or demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

2945. (§ 4286.) *All claims must be itemized.*—No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated, and be verified by

affidavit, showing that the account is just and wholly unpaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Every claim against the county must be presented within a year after the last item accrued.

Tinkel v. Griffin, 26 Mont. 429; 68 Pac. 860.

Sears v. Gallatin Co., 20 Mont. 462; 52 Pac. 204. One who serves as a member of the comitatus of a sheriff, in obedience to the law requiring him to do so, cannot recover from the county for

expenses or for services, in the absence of an express or implied provision of law authorizing the payment thereof, and authority for such payment is not given under this section.

Greeley v. Cascade Co., 22 Mont. 587; 57 Pac. 276.

2946. (§ 4287.) *Account must be filed prior to session.*—No account must be necessarily passed upon by the board, unless made out as prescribed in the preceding section and filed by the clerk prior to the session at which it is asked to be heard.

2947. (§ 4288.) *Appeals.*—Whenever a claim against a county is disallowed in whole or in part, or when any taxpayer of the county is not satisfied with any allowance made by the board, the claimant or such taxpayer may appeal from the decision of the board to the district court for the county, by causing a written notice of appeal to be served on the clerk of the board, within thirty days after the making of the decision or allowance, and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute such appeal to effect, and to pay all costs that may be adjudged against the appellant.

Greeley v. Cascade Co., 22 Mont. 586; 57 Pac. 276. A claimant against a county has the right to maintain an independent action on the claim, rejected

by the board of commissioners.
Ind. Pub. Co. v. L. & C. Co., 30 Mont. 84; 75 Pac. 860.

2948. (§ 4289.) *Duty of clerk on appeals.*—The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney, and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court; and such appeal must be entered, tried and determined, the same as appeals from justices' courts, and costs are awarded in like manner.

State v. District Court, 19 Mont. 504; 48 Pac. 1105.

2949. (§ 4290.) *What warrants must specify. How presented and paid.*—Warrants drawn by order of the board on the county treasurer for the current expenses during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

Greeley v. Cascade Co., 22 Mont. 587; 57 Pac. 276. An action cannot be main-

tained against a county on a county warrant.

2950. (§ 4291.) *Annual examination of accounts by board.*—The board at its annual March session, or oftener if necessary, must examine the county warrants returned by the county treasurer, by comparing each warrant with the record of warrants issued in the county clerk's office. The board must cause to be entered on said record, opposite to the entry of each warrant issued, the date when the same was canceled; and make a list of the warrants so canceled; specifying the number, date, amount and the person to whom the same was payable, and enter the same on the minutes of the board. The board must cause to be canceled all county warrants that have remained one year or more uncalled for in the county clerk's office, the same to be canceled in the same manner as other county warrants. At the same time the county treasurer must deliver to the board all warrants or vouchers that he may have in his possession, for moneys disbursed by him as treasurer, and the clerk must receipt for the same.

2951. (§ 4292.) *Commissioners not to be interested.*—No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or the purchasing of supplies, or for any other purpose.

2952. (§ 4293.) *Claims in favor of county commissioners.*—All claims against the county presented by members of the board for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

2953. (§ 4294.) *Annual report of county clerk.*—The county clerk must annually make out and present to the board at the regular March session, a full and complete statement of the financial condition of the county:

1. The indebtedness of the county, funded and floating, the amount of each class of such indebtedness, or any part thereof.
2. The amount of moneys, if any, on hand, as shown by the statement of the previous year.
3. The amount of moneys received for taxes upon real and personal property.
4. The amount of moneys received by him for fines, penalties and forfeitures.
5. The amount of moneys received for licenses.
6. The amount of moneys received from other sources.
7. A concise description of all property owned by the county, with an approximate estimate of the value thereof, and the amount of cash in the county treasury subject to the payment of such indebtedness.

8. The statement must always show the amount of moneys paid out from the different funds of the counties. The totals of the several amounts of moneys paid out must be deducted from the sums of moneys on hand at the beginning of the previous year, and moneys received during the year by the county treasurer, and a balance must be struck.

9. The statement must also show the assessed valuation of all real and personal property for that year, the rate of taxation, the assessed valuation of real and personal property on which taxes have not been paid, the total delinquent taxes for the year and for each preceding year.

2954. (§ 4295.) *What may be recovered on the bond.*—Any county commissioner who neglects or refuses to perform any duty imposed on him, without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently, or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

CHAPTER III.

COUNTY OFFICERS.

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| ARTICLE | I. | GENERAL PROVISIONS. |
| | II. | COUNTY TREASURER. |
| | III. | SHERIFF. |
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ARTICLE I.

GENERAL PROVISIONS.

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| Section | 2955. | <i>General qualifications for county office.</i> |
| " | 2956. | <i>Same for district and township offices.</i> |
| " | 2957. | <i>County officers enumerated.</i> |
| " | 2958. | <i>Township officers.</i> |

- Section 2959. Offices united and consolidated.*
- “ 2960. *County and other officers, when elected and term of office.*
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- “ 2962. *District judges and justices of the peace; election and term of office.*
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- “ 2964. *Mode of making appointments of assistants.*
- “ 2965. *Official mention of principal officer includes deputies.*
- “ 2966. *Vacancies, how filled.*
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- “ 2981. *County officers must report fees.*
- “ 2982. *Board of county commissioners must examine reports.*
- “ 2983. *Clerk must report to state officer.*
- “ 2984. *Auditor must make report.*
- “ 2985. *Penalties.*

2955. (§ 4310.) *General qualifications for county office.*—No person is eligible to a county office who at the time of his election is not of the age of twenty-one years, a citizen of the state, and an elector of the county in which the duties of the office are to be exercised or for which he is elected.

2956. (§ 4311.) *Same for district and township offices.*—No person is eligible to a district or township office who is not of the age of twenty-one years, a citizen of the state and an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

2957. (§ 4312.) *County officers enumerated.*—The officers of a county are:

A treasurer.

A county clerk.

A clerk of the district court.

A sheriff.

A county auditor; except in the fourth, fifth, sixth, seventh and eighth class counties.

A county attorney.

A surveyor.

A coroner.

A public administrator.

An assessor.

A county superintendent of common schools.

A board of county commissioners. [*Act approved March 18, 1895.*]

State v. Granite Co., 23 Mont. 252; State v. Dickinson, 26 Mont. 394; 68 Pac. 439. Pac. 470.

2958. (§ 4313.)—*Township officers.*—The officers of townships are: Two justices of the peace, two constables, and such other inferior and subordinate officers as are provided for elsewhere in this code, or by the board of county commissioners.

2959. (§ 4314.) *Offices united and consolidated.*—The county clerk is clerk of the board of county commissioners, and ex-officio recorder. The treasurer is collector of taxes.

2960. (§ 4315.) *County and other officers, when elected and term of office.*—All elective county and township officers, except county commissioners, must be elected at the general election to be held in the year eighteen hundred and ninety-four, and at the general election to be held every second year thereafter, and must take office on the first Monday of January next succeeding their election, except county treasurer, whose term begins on the first Monday of March next succeeding his election, and hold office for two years.

2961. (§ 4216.) *Election and terms of county commissioners.*—The election and terms of office of county commissioners are provided for in the constitution.

2962. (§ 4217.) *District judges and justices of the peace; election and term of office.*—The election and terms of office of district judges and justices of the peace are provided for in title I., of the Code of Civil Procedure.

2963. (§ 4318.) *County and township officers may generally appoint deputies at discretion.*—Every county and township officer, except county commissioner and justice of the peace, may appoint as many deputies as may be necessary for the faithful and prompt discharge of the duties of his office, but no compensation or salary must be allowed any deputy except as provided in this code.

Jobb v. Meagher Co., 20 Mont. 428; have no application to the appointment
 51 Pac. 1035. by the court of counsel to assist a
 State v. Whitworth, 26 Mont. 117; county attorney in prosecuting persons
 66 Pac. 751. Sections 4318 and 4319 charged with crime.

2964. (§ 4319.) *Mode of making appointments of assistants.*
 —The appointment of deputies, clerks and subordinate officers of
 counties, districts and townships must be made in writing and
 filed in the office of the county clerk.

Jobb v. Meagher Co., 20 Mont. 429; State v. Whitworth, 26 Mont. 117;
 51 Pac. 1036. 66 Pac. 751.

2965. (§ 4320.) *Official mention of principal officer includes deputies.*—Whenever the official name of any principal officer
 is used in any law conferring power, imposing duties or liabilities,
 it includes his deputies.

2966. (§ 4321.) *Vacancies, how filled.*—All vacancies in
 county and township offices, except county commissioner, are
 filled by appointment made by the county commissioners. Ap-
 pointees hold until the vacancies are filled by election.

2967. (§ 4322.) *Keep office at county seat.*—All county of-
 ficers must keep their offices at the county seat.

2968. (§ 4323.) *What offices to be kept open at county seat.*
District judge and his chambers.—The sheriff, the county clerk,
 the clerk of the district court, the treasurer and county attorney
 must keep their offices open for the transaction of business from
 nine o'clock a. m. until five o'clock p. m., continuously every day
 in the year, except holidays, and at any other time when business
 requires it.

2969. (§ 4324.) *Civil penalty for misconduct in office at-
 taches to official bond.*—Whenever, except in criminal prosecu-
 tions, any special penalty, forfeiture, or liability is imposed on
 any officer for non-performance or mal-performance of official
 duty, the liability therefor attaches to the official bond of such
 officer, and to the principal and sureties thereon.

2970. (§ 4325.) *County officers may administer oaths.*—
 Every officer mentioned in § 2957 (4312) and every justice of the
 peace may administer and certify oaths.

2971. (§ 4326.) *Absence of county officers from state.*—A
 county officer must, in no case, absent himself from the state for
 a period of more than sixty days, and for no period without the
 consent of the board of county commissioners, and if he does so
 absent himself he forfeits his office.

People v. Fleming, 100 Cal. 540; 35 Pac. 163.

2972. (§ 4327.) *Certain officers prohibited from practicing
 law, etc.*—Sheriffs, clerks, and constables, and their deputies are
 prohibited from practicing law, or acting as attorneys or counsel-
 lors at law, or having as a partner a lawyer, or one who acts as
 such.

2973. *Classification of counties.*—For the purpose of regulat-
 ing the compensation and salaries of all county officers, not oth-

erwise provided for, and for fixing the penalties of officers' bonds. The several counties of this State shall be classified according to the assessed valuation thereof, as follows:

First Class: All counties having an assessed valuation of thirty million of dollars or over.

Second Class: All counties having an assessed valuation of more than twenty and less than thirty million of dollars.

Third Class: All counties having an assessed valuation of more than fifteen and less than twenty million of dollars.

Fourth Class: All counties having an assessed valuation of more than eleven and less than fifteen million of dollars.

Fifth Class: All counties having an assessed valuation of more than eight and less than eleven million of dollars.

Sixth Class: All counties having an assessed valuation of more than five and less than eight million of dollars.

Seventh Class: All counties having an assessed valuation of more than three and less than five million of dollars.

Eighth Class:—All counties having an assessed valuation of less than three million of dollars. [*Act approved February 16, 1905, § 1.*] (*9th Sess. Chap. 20.*)

2974. *Classification of counties created by Ninth Legislative Assembly.*—That all counties created by the Ninth Legislative Assembly shall be classified according to the provisions of this Act, and all salaries in such counties shall be governed thereby. [*Act approved February 16, 1905, § 2.*] (*9th Sess. Chap. 20.*)

2975. *County commissioners to designate class.*—The several boards of county commissioners must, at their regular session in September, 1906, make an order designating the class to which such county belongs as determined by the assessed valuation of such county for the year 1906, under the provisions of this Act, and in each even numbered year thereafter; provided that such classification shall not change the government of the county then in existence until the first Monday in January next succeeding. [*Act approved February 16, 1905, § 3.*] (*9th Sess. Chap. 20.*)

2976. *Official bonds classified and amounts.*—County officers must execute official bonds corresponding to the class of the county of which they are officers, in not less than the following amounts, as may be determined by the Board of County Commissioners:

Sheriffs:

First class, thirty thousand dollars.

Second class, twenty-five thousand dollars.

Third class, twenty thousand dollars.

Fourth class, fifteen thousand dollars.

Fifth class, twelve thousand dollars.

Sixth, seventh, and eighth classes, ten thousand dollars.

County Clerk, Assessors, and Clerk of the District Court:

First class, twenty-five thousand dollars.

Second class, twenty thousand dollars.

Third class, fifteen thousand dollars.

Fourth class, twelve thousand dollars.

Fifth class, ten thousand dollars.

Sixth, seventh, and eighth classes, eight thousand dollars.

County Auditor:

First class, thirty thousand dollars.

Second class, twenty-five thousand dollars.

Third class, twenty thousand dollars.

Treasurers:

First, second and third classes, one hundred and fifty thousand dollars.

Fourth class, one hundred and twenty-five thousand dollars.

Fifth class, one hundred thousand dollars.

Sixth, seventh and eighth classes, forty thousand dollars.

County Attorneys, County Surveyors, School Superintendents:

First, second and third classes, ten thousand dollars.

Fourth class, five thousand dollars.

Fifth class, three thousand dollars.

Sixth, seventh and eighth classes, two thousand dollars.

Coroners and Public Administrators:

First, second and third classes, fifteen thousand dollars.

Fourth class, twelve thousand dollars.

Fifth class, ten thousand dollars.

Sixth, seventh and eighth classes, eight thousand dollars.

County Commissioners:

First, second and third classes, fifteen thousand dollars.

Fourth class, ten thousand dollars.

Fifth class, eight thousand dollars.

Sixth, seventh and eighth classes, five thousand dollars. [*Act approved March 7th, 1899, § 1.*] (6th Sess. 77-9.)

2977. (§ 4334.) *When amount of bond is not fixed by law.*—When the amount of the bond to be given by any county or township officer is not fixed by law, the amount must be fixed by the board of county commissioners.

2978. *Quarterly inspection of official bonds.*—That at the regular quarterly meetings of all boards of county commissioners in this State, in March and September, of each year, every board of county commissioners shall carefully examine all official bonds of all county and township officials of its county, then in force and effect, and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency; and, if it appear to the satisfaction of any such board of county commissioners, or a majority of the members thereof, that any surety upon any such bond within and for its county has, since the ap-

proval and acceptance of such bond, died or withdrawn therefrom or removed from the state or disposed of all of his property in this state or become insane, insolvent, financially embarrassed or not good and responsible for the amount of his liability thereon, such board of county commissioners shall immediately cause the clerk of said board, for it, to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection therewith and the reasons thereof; and said judge shall forthwith take cognizance thereof and investigate such matter and take steps, by order to show cause, or other order citation, step or action, as may be necessary to make such bond good and sufficient, according to the requirements of law in the premises, and ample security for the amount thereof. [*Act approved February 15th, 1901, § 1.*] (7th Sess. 92-3.)

2979. *Penalty for failure to perform duty.*—Any county commissioner failing or refusing to comply with the provisions of § 2978 (1) of this Act, shall, upon conviction thereof, be guilty of a misdemeanor. [*Act approved February 25th, 1901, § 2.*] (7th Sess. 93.)

2980. (§ 4335.) *Other provisions relating to county officers.*—Other provisions relating to the different classes of officers are contained in chapter VII., title I., part III., of this code.

2981. (§ 4336.) *County officers must report fees.*—It is the duty of all county officers, justices of the peace and constables, to make a report in writing, under oath, to the board of county commissioners, on the first Mondays of March, June, September, and December, showing in detail all fees, emoluments and compensation received, and moneys disbursed by them in their official capacity during the quarter preceding the making of each report.

2982. (§ 4337.) *Board of county commissioners must examine reports.*—It is the duty of the board to examine the reports, and if the report of an officer is found correct, the chairman of the board must write on the back of the same the words, "Approved and ordered filed," and sign his name thereto. If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board, and then, if found correct, filed as aforesaid.

2983. (§ 4338.) *Clerk must report to state officer.*—It is the duty of the clerk of the board, within ten days after the adjournment of each regular session, to report in tabular form to the state auditor from the information contained in such reports, the amounts so received and for what purposes received, and moneys disbursed and for what purposes disbursed, which reports must be filed in the office of the state auditor.

2984. (§ 4339.) *Auditor must make report.*—The state auditor must publish such reports in tabular form, in the state auditor's and state treasurer's reports. Such reports shall show,

in tabular form, the amounts received and moneys disbursed by each officer in each county, and the sources from which said amounts were received.

2985. (§ 4340.) *Penalties.*—Every officer who fails to comply with or violates any of the provisions of this article, is punishable as provided in § 8281 (299) of the Penal Code.

ARTICLE II.

COUNTY TREASURER.

- Section 2986. Duty of county treasurer.*
- “ 2987. *Must receipt for money.*
 - “ 2988. *Mode of redeeming warrants.*
 - “ 2989. *Registry of warrants. Interest.*
 - “ 2990. *Notice of redemption of warrants.*
 - “ 2991. *What it must state and how published.*
 - “ 2992. *Priority in payment of warrants.*
 - “ 2993. *Warrants must be registered in name of payee.*
 - “ 2994. *Funds reserved sixty days therefor.*
 - “ 2995. *Must note the interest paid on warrant.*
 - “ 2996. *Settlements, annual and monthly.*
 - “ 2997. *Report to board of commissioners each session.*
 - “ 2998. *Penalty for not reporting.*
 - “ 2999. *When he must sue county attorney.*
 - “ 3000. *When he must sue coroner.*
 - “ 3001. *What he must do with property.*
 - “ 3002. *Money may be demanded in six years.*
 - “ 3003. *County funds. Deposits. Bonds for safe keeping.*
 - “ 3004. *County commissioners may suspend treasurer.*
 - “ 3005. *No commissions allowed.*
 - “ 3006. *Books and vouchers subject to inspection by grand jury, etc.*
 - “ 3007. *Must permit state examiner and county clerk to examine books.*
 - “ 3008. *His duty as collector of taxes.*

2986. (§ 4350.) *Duty of county treasurer.*—The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law.

2. Keep an account of the receipt and expenditures of all such moneys in books provided for the purpose, in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him.

3. So keep his books that the amount received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account.

4. Enter no moneys received for the current year on his account with the county for the past fiscal year until after his annual settlement for the past year has been made with the county clerk.

5. Disburse the county moneys only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

6. To keep all school moneys in a separate fund, and to keep a separate account of their disbursement to the several school districts which are entitled to receive them according to the apportionment of the county superintendent of common schools.

7. To notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and to inform him of the amount of school moneys belonging to any other fund subject to apportionment.

8. To pay all warrants drawn on county or district school moneys, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly indorsed by the holders.

9. To make, annually, during the month of September of each year, a financial report for the last preceding year, ending with August 31st, to the county superintendent in such form as may be required by him.

Greeley v. Cascade Co., 22 Mont. 587; 57 Pac. 276. The owner of a warrant which the treasurer refuses to pay, can-

not obtain a money judgment against the county in an action on the warrant.

2987. (§ 4351.) *Must receipt for money.*—When any money is paid to the county treasurer, he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county clerk, who must charge the treasurer therewith and give the person paying the same a receipt.

2988. (§ 4352.) *Mode of redeeming warrants.*—When a warrant is presented for payment if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "Paid," the date of payment, and sign his name thereto.

2989. *Registry of warrants. Interest.*—When any warrant is presented to the Treasurer for payment, and the same is not paid for want of funds, the Treasurer must endorse thereon, "Not paid for want of funds" annexing the date of presentation and sign his name thereto; and from that time until paid the warrant bears six (6) per cent per annum interest. [*Act approved February 20th, 1899, § 2.*] (6th Sess. 99.)

2990. (§ 4354.) *Notice of redemption of warrants.*—When there are sufficient moneys to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county, or, if none is published, then by written notice posted upon the court house door, stating therein that he is ready to pay such warrants. From the first publication or posting of such notice, such warrants cease to draw interest.

2991. (§ 4355.) *What it must state and how published.*—In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants, presented for payment prior to such date, stated in the notice, are payable. When a part only of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

2992. (§ 4356.) *Priority in payment of warrants.*—Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer and upon the receipts of moneys into the treasury not otherwise appropriated, he must set apart the same, or so much thereof as is necessary for the payment of such warrants.

2993. (§ 4357.) *Warrants must be registered in name of payee.*—The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof, except at the request of such payee, or his agent, assignee or legal representative, whose authority must be produced to the treasurer in writing, and he must not pay any order or warrant except to the payee thereof, or to his agent, assignee or legal representative, whose authority must be in writing and delivered to him, and must be returned with such order or warrant, when paid, to the board of county commissioners.

2994. (§ 4358.) *Funds reserved sixty days therefor.*—If such warrants be not re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of county commissioners may, on application, and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

2995. (§ 4359.) *Must note the interest paid on warrant.*—When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon, and enter on his account the amount of such interest distinct from the principal.

2996. (§ 4360.) *Settlements, annual and monthly.*—The treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue, of whatsoever nature and kind, with the county clerk, on the first Monday of each month. For the purpose of making such settlements he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor. He must make a full settlement of all accounts with the county clerk, annually, on the first Monday of January, in the presence of the county commissioners, who have control thereof.

2997. (§ 4361.) *Report to board of commissioners each session.*—Each county treasurer must make a detailed report, at every regular meeting of the board of county commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county may clearly and distinctly appear.

2998. (§ 4362.) *Penalty for not reporting.*—If any county treasurer neglects or refuses to settle or report, as required in the preceding section, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of county commissioners must institute suits for the recovery thereof.

2999. (§ 4363.) *When he must sue county attorney.*—If the county attorney refuses or neglects to account for and pay over money received by him, as required by the fifth subdivision of § 3052 (4450), the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action, in addition to the amount so received, fifty per cent. thereon by way of damages.

3000. (§ 4364.) *When he must sue coroner.*—If the coroner, or any justice of the peace acting as coroner, fails to deliver to the treasurer within thirty days after any inquest upon a dead body all money and property found upon such body, unless claimed in the meantime by the public administrator or other legal representative of the decedent, as required by § 3064 (4492), the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

3001. (§ 4365.) *What he must do with property.*—The treasurer upon receiving from the coroner, or justice acting as coroner,

money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must, within thirty days, sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

3002. (§ 4366.) *Money may be demanded in six years.*—If the money in the treasury is demanded within six years by the legal representative of the decedent, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of county commissioners.

3003. *County funds. Deposits. Bonds for safe keeping.*—The county treasurer must keep all moneys belonging to the county, and all other moneys by law directed to be paid to him, in his own possession until disbursed according to law. In the event that he shall deposit the same, or any part thereof with any national, state or private bank or banks, he shall require from such bank or banks a good and sufficient bond in double the amount deposited, signed by three or more good and sufficient sureties, which must be approved by the board of county commissioners and filed with the county clerk of the county. But nothing in this section prohibits him from making special deposits for the safe keeping of public moneys, *Provided*, always, that this act shall in no wise repeal, affect or in any wise modify the provisions of an Act entitled an Act to permit Foreign Surety Companies to do business in this state, and regulating the method thereof, approved Feb. 24th, 1899. [*Act approved February 16th, 1903, § 1.*] (8th Sess. Chap. 5.)

3004. (§ 4368.) *County commissioners may suspend treasurer.*—Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may, in its discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

3005. (§ 4369.) *No commissions allowed.*—In case of the death of any county treasurer, his legal representatives must deliver up all official moneys, books, accounts, papers and documents which come into their possession. No percentage must be allowed to the treasurer on any money by him received from his predecessor in office, or from the legal representative of such predecessor.

3006. (§ 4370.) *Books and vouchers subject to inspection by grand jury, etc.*—The books, accounts and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and grand jury.

3007. (§ 4371.) *Must permit state examiner and county clerk to examine books.*—The treasurer must permit the state examiner and county clerk or the board of county commissioners to examine his books and count the money in the treasury whenever any of them may wish to make an examination or counting.

3008. (§ 4372.) *His duty as collector of taxes.*—His duties as collector of taxes are prescribed in title XII., part III., of this code.

ARTICLE III.

SHERIFF.

Section 3009. *“Process” and “notice” defined.*

“ 3010. *Duties of sheriff.*

“ 3011. *Must appoint under sheriff.*

“ 3012. *Duties of under sheriff.*

“ 3013. *Action against may be prosecuted against executors.*

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“ 3017. *Liability for refusing to levy or sell.*

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“ 3019. *Liability for permitting an escape.*

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“ 3022. *Direction to sheriff must be in writing.*

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“ 3028. *Coroner to execute process when sheriff is a party.*

“ 3029. *Elisors to act in cases designated.*

“ 3030. *Other duties of sheriff.*

3009. (§ 4380.) *“Process” and “notice” defined.*—“Process,” as used in this article, includes all writs, warrants, summons, and orders of courts of justice or judicial officers. “Notice” includes all papers and orders (except process) required to be served in any proceeding before any court, board or officer, or when required by law to be served independently of such proceeding.

Hooper v. McDade, 1 Cal. App. 737; 82 Pac. 1116.

3010. (§ 4381.) *Duties of sheriff.*—The sheriff must:

1. Preserve the peace.

2. Arrest and take before the nearest magistrate, for examination, all persons who attempt to commit or have committed a public offense.

3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.

4. Attend all courts, except justices' and police courts, at their respective terms or sessions held within his county, and obey their lawful orders and directions.

5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties.

6. Take charge of and keep the county jail and the prisoners therein.

7. Indorse upon all notices and process the year, month, day, hour and minute of reception, and issue therefor to the person delivering it, on payment of fees, a certificate showing the names of the parties, title of paper, and time of reception.

8. Serve all process or notices in the manner prescribed by law.

9. Certify under his hand upon the process or notices the manner and time of service, or, if he fails to make service, the reasons of his failure, and return the same without delay.

Sears v. Gallatin Co., 20 Mont. 462; *Hooper v. McDade*, 1 Cal. App. 737. 52 Pac. 204.

3011. (§ 4382.) *Must appoint under sheriff.*—The sheriff must, as soon as may be after he enters upon the duties of his office, appoint some person under sheriff to hold during the pleasure of the sheriff. Such under sheriff has the same powers and duties as a deputy sheriff.

Jobb v. Meagher Co., 20 Mont. 429; 51 Pac. 1036.

3012. (§ 4383.) *Duties of under sheriff.*—Whenever a vacancy occurs in the office of sheriff the under sheriff must in all things execute the office of sheriff until a sheriff is elected or appointed and duly qualified. Any default, misfeasance, or malfeasance of such under sheriff in the meantime as well as before is a breach of the condition of the bond given by the sheriff who appointed him, and also a breach of the conditions of the bond given by him to the sheriff.

3013. (§ 4384.) *Action against may be prosecuted against executors.*—Any action for default or misconduct of any sheriff, his under sheriff, jailer or any of his deputies, may be prosecuted against the executors or administrators of such sheriff.

3014. (§ 4385.) *Return by mail to another county.*—When process or notices are returnable to another county, the sheriff may enclose such process or notice in an envelope, addressed to the officer who sent them, and deposit it in the postoffice, prepaying postage.

3015. (§ 4386.) *Return prima facie evidence.*—The return of the sheriff upon process or notices, is prima facie evidence of the facts in such return stated.

People v. Lee, 128 Cal. 332; 60 Pac. 854.

3016. (§ 4387.) *Penalty for delaying return.*—If the sheriff does not return a notice or process in his possession with the necessary indorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

Alexander v. Wilson, 144 Cal. 8; 77 Pac. 706.

3017. (§ 4388.) *Liability for refusing to levy or sell.*—If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property.

Alexander v. Wilson, 144 Cal. 8; 77 Pac. 706.

3018. (§ 4389.) *Damages for refusing to pay over money.*—If he neglects or refuses to pay over on demand to the person entitled thereto any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof, with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

Oppenheimer v. Regan, 32 Mont. 118; 79 Pac. 697.

3019. (§ 4390.) *Liability for permitting an escape.*—A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail.

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment.

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained.

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation or exculpation.

3020. (§ 4391.) *Liability for a rescue.*—He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

3021. (§ 4392.) *No action for escape or rescue after return or recapture.*—An action cannot be maintained against a sheriff for a rescue, or for an escape of a person arrested upon an execu-

tion or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail, or is retaken by the sheriff.

3022. (§ 4393.) *Direction to sheriff must be in writing.*—No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party.

3023. (§ 4394.) *When office of sheriff deemed vacant.*—When the sheriff is committed under an execution or commitment, for not paying over money received by him by virtue of his office, and remains committed for sixty days, his office is vacant.

Morton v. Broderick, 118 Cal. 483; 50 Pac. 644.

3024. (§ 4395.) *When sheriff justified in executing process.*—A sheriff, or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

Ayres v. Burr, 132 Cal. 129; 64 Pac. 120.

3025. (§ 4396.) *Officer to exhibit process.*—The officer executing such process must then, and at all times subsequent, so long as he retains it, upon request show the same with all papers attached, to any person interested therein.

3026. (§ 4397.) *Sheriff to act as crier.*—The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear before the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

3027. (§ 4398.) *Service on sheriff, how made.*—Service of a paper, other than a process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

3028. (§ 4399.) *Coroner to execute process when sheriff is a party.*—When the sheriff is a party to an action or proceeding the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coroner of the county.

Burns v. Court, 140 Cal. 5; 73 Pac. 597.

3029. (§ 4400.) *Elisors to act in cases designated.*—Process or orders in an action or proceeding, may be executed by a person residing in the county, designated by the court or a judge thereof, and denominated an elisor, in the following cases:

1. When the sheriff and coroner are both parties.

2. When either of these officers is a party, and the process is against the other; and

3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially. When process is delivered to an elisor, he must execute and return it in the same manner as the sheriff is required to execute similar process. The court or judge may at any time on its own motion appoint an elisor.

People v. Fellows, 122 Cal. 236; 54 Pac. 830.

3030. (§ 4401.) *Other duties of sheriff.*—The sheriff must perform such other duties as are required of him by law.

ARTICLE IV.

COUNTY CLERK.

Section 3031. County clerk as ex-officio recorder to procure record books.

“ 3032. *What to be recorded.*

“ 3033. *Indexes to be kept.*

“ 3034. *Same.*

“ 3035. *To record decrees of partition.*

“ 3036. *Filing or copy to impart notice.*

“ 3037. *Must keep a map book.*

“ 3038. *May keep two or more indexes in the same volume.*

“ 3039. *Duty on receipt of instrument to be recorded.*

“ 3040. *Recorded instrument to be indorsed.*

“ 3041. *To make searches.*

“ 3042. *Liable for neglect of certain duties.*

“ 3043. *Fees to be prepaid.*

“ 3044. *Records open to inspection.*

“ 3045. *Duties of the county clerk.*

“ 3046. *Warrants to be numbered.*

“ 3047. *Other duties.*

3031. (§ 4410.) *County clerk as ex-officio recorder to procure record books.*—The county clerk as ex-officio recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners. He has the custody and must keep all the books, records, maps and papers deposited in his office.

3032. (§ 4411.) *What to be recorded.*—He must, upon the payment of his fees for the same, record, separately, in large and well bound separate books, in a fair hand:

1. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, and leases which have been acknowledged or proved.

2. Certificates of marriage and marriage contracts, and births and deaths.

3. Wills devising real estate admitted to probate.

4. Official bonds.

5. Transcripts of judgments which by law are made liens upon real estate.

6. Instruments describing or relating to the separate property of married women and sole trader judgments.

7. All orders and decrees made by the district court in probate matters affecting real estate which are required to be recorded.

8. Notices of pre-emption claims.

9. Notices and declaration of water rights.

10. Assignments for the benefit of creditors.

11. Affidavits of annual work done on mining claims.

12. Notices of mining location and declaratory statement.

13. Estrays and lost property.

14. A book containing appraisalment of state lands.

15. Such other writings as are required or permitted by law to be recorded.

3033. (§ 4412.) *Indexes to be kept.*—Every county clerk as ex-officio recorder must keep:

1. An index of deeds, grants and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers or contracts," and "Where recorded."

2. An index of deeds labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers or contracts," and "Where recorded."

3. Two indexes of mortgages labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled."

4. Two indexes of mortgages labeled respectively: "Mortgages of real property," "Mortgages of personal property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled." [*Subdivisions 3 and 4. Act approved March 18, 1895.*]

5. Two indexes of releases of mortgages labeled respectively: "Releases of mortgages of real property—mortgages," "Releases

of mortgages of personal property—mortgagees,” with the pages thereof divided into six columns, headed respectively: “Parties whose mortgages are released,” “Parties releasing,” “Date of release,” “Where recorded,” or “Where filed,” “Date of mortgages released,” “Where mortgages released are recorded,” or if personal property, “When filed.”

6. An index of powers of attorney labeled “Powers of attorney,” each page divided into five columns, headed respectively: “Names of parties executing powers,” “To whom powers are executed,” “Date of powers,” “Date of recording,” “To whom powers are executed.”

7. An index of leases labeled “Leases,” each page divided into four columns, headed respectively: “Names of lessors,” “Names of lessees,” “Date of leases,” “When and where recorded.”

8. An index of leases labeled “Lessees,” each page divided into four columns, headed respectively: “Names of lessees,” “Names of lessors,” “Date of leases,” “When and where recorded.”

9. An index of marriage certificates labeled “Marriage certificate—men,” each page divided into six columns, headed respectively: “Men married,” “To whom married,” “When married,” “By whom married,” “Where married,” “Where certificates are recorded.”

10. An index of marriage certificates, labeled “Marriage certificates—women,” each page divided into six columns, headed respectively: “Women married” (and under this head placing the family names of the women), “To whom married,” “When married,” “By whom married,” “Where married,” “Where certificates are recorded.”

11. An index of assignments of mortgages and leases, labeled “Assignments of mortgages and leases—assignors,” each page divided into five columns, headed respectively: “Assignors,” “Assignees,” “Instruments assigned,” “Date of assignment,” “When and where recorded.”

12. An index of assignments of mortgages and leases, labeled “Assignments of mortgages and leases—assignees,” each page divided into five columns, headed respectively: “Assignees,” “Assignors,” “Instruments,” “Date of assignments,” “When and where recorded.”

13. An index of wills, labeled “Wills,” each page divided into four columns, headed respectively: “Names of testators,” “Date of wills,” “Date of probate,” “When and where recorded.”

14. An index of official bonds, labeled “Official bonds,” each page divided into five columns, headed respectively: “Names of officers,” “Names of offices,” “Date of bonds,” “Amount of bonds,” “When and where recorded.”

15. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into three columns, headed respectively: "Parties claiming liens," "Against whom claimed," "Notices, when filed."

16. An index to transcripts of judgments, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively: "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

17. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively: "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When filed," "When attachments discharged."

18. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively, "Parties to actions," "Notices when recorded," "When filed."

19. An index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings, labeled "Certificates of sale," each page divided into four columns, headed respectively: "Plaintiff," "Defendant," "Purchaser at sale," "Date of sale."

20. An index of the separate property of married women and sole trader judgments, labeled "Separate property of married women and sole traders," each page divided into five columns, headed respectively: "Names of married women," "Names of their husbands," "Nature of instruments recorded," "When recorded," "Where recorded."

21. An index to affidavits for annual work done on mining claims, showing name of the affiant, the name of the claim, where situated, and the year when the work was done, labeled "Annual work on mining claims."

22. An index of mining claims and declaratory statements, labeled "Notices of location of mining claims and declaratory statements," each page divided into four columns, headed respectively: "Locators," "Name of claim," "Notice, when filed," "Where recorded."

23. An index to the register of births and deaths.

24. An index to notices and declarations of water rights.

25. An index to the "Estray and lost property book."

26. An index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory when filed.

27. A miscellaneous index, in which must be indexed papers not hereinbefore stated.

3034. (§ 4413.) *Same.*—He must keep an index to the book of maps or plats, which must contain the name of the proprietor

of the town, village or addition platted, and a general description of the same.

3035. (§ 4414.) *To record decrees of partition.*—He must file and record with the record of deeds, grants and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county.

3036. (§ 4415.) *Filing or copy to impart notice.*—Every such certified copy of a judgment of partition or any other judgment from the time of filing the same for record imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such property or judgment was a duly recorded deed, grant or transfer.

3037. (§ 4416.) *Must keep a map book.*—He must keep a well bound book, which must contain maps of towns, villages or additions to the same within his county, together with the description, acknowledgment or other writing thereon.

3038. (§ 4417.) *May keep two or more indexes in the same volume.*—He may keep in the same volume any two or more of the indexes mentioned in § 3033 (4412), but the several indexes must be kept distinct from each other, and the volumes distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column of the several indexes must be arranged in alphabetical order, and when a conveyance is executed by a sheriff the name of the sheriff and the party charged in the execution must both be inserted in the index; and when an instrument is recorded to which an executor, administrator, or trustee is a party the name of such executor, administrator, or trustee, together with the name of the testator or intestate, or party for whom the trust is held, must be inserted in the index.

3039. (§ 4418.) *Duty on receipt of instrument to be recorded.*—When any instrument, paper or notice authorized by law to be recorded is deposited in the office of the county clerk, as ex-officio recorder, for record, he must indorse upon the same the time it was received, noting the year, month, day, hour and minute of its reception, and must record the same without delay, together with the acknowledgment, proofs and certificates written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception. [Act approved March 18, 1895.]

3040. (§ 4419.) *Recorded instrument to be indorsed.*—He must also indorse upon each instrument, paper or notice, the time

when and the book and pages in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order.

3041. (§ 4420.) *To make searches.*—He may, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages and all other instruments, papers or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded. [*Act approved March 18, 1895.*]

3042. (§ 4421.) *Liable for neglect of certain duties.*—If any county clerk as ex-officio recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be by law recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice within reasonable time after receiving the same; or,
2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed; or,
3. Neglects or refuses to keep in his office such indexes as are required by this article, or to make the proper entries therein; or,
4. Neglects or refuses to make the searches and to give the certificate required by this article; or if such searches or certificate are incomplete or defective, when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested; or, [*Subdivision 4. Act approved March 18, 1895.*]

5. Alters, changes or obliterates any records deposited in his office, or inserts any new matter therein, he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby, and is punishable as provided in the Penal Code.

3043. (§ 4422.) *Fees to be prepaid.*—He is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fee for the same, as prescribed by law, is, if demanded, paid or tendered.

3044. (§ 4423.) *Records open to inspection.*—All books or records, maps, charts, surveys and other papers on file in his office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and he must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

3045. (§ 4424.) *Duties of the county clerk.*—The county clerk must:

1. Take charge of, and safely keep or dispose of, according to law, all books, papers, and records which may be filed or deposited in his office.

2. Act as clerk of the board of county commissioners.

3. Draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county, which have been legally examined, allowed, and ordered paid by the board of county commissioners; also for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal. [*Subdivision 3. Act approved March 18, 1895.*]

4. He must keep accounts current with the treasurer, and when any person deposits with the county clerk any receipt given by the treasurer for any money paid into the treasury, the county clerk must file such receipt and charge the treasurer with the amount thereof.

5. Make the annual statement as prescribed in § 2953 (4294).

3046. (§ 4425.) *Warrants to be numbered.*—All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn, must be stated thereon, and they must, at the time they are issued, be registered by him.

3047. (§ 4426.) *Other duties.*—The county clerk must keep such other records and books, and perform such other duties as are prescribed by law.

ARTICLE V.

CLERK OF THE DISTRICT COURT.

Section 3048. Duties and records to be kept.

“ 3049. *Other duties.*

“ 3050. *Indices to court records.*

“ 3051. *Duties concerning same.*

3048. (§ 4440.) *Duties and records to be kept.*—The clerk of the district court, in addition to the duties prescribed by the Code of Civil Procedure and the Penal Code, must:

1. Take charge of and safely keep or dispose of, according to law, all books, papers and records which may be filed or deposited in his office.

2. Act as clerk of the district court, and attend each term or session thereof and upon the judges at chambers when required.

3. Issue all process and notices required to be issued; enter all orders, judgments and decrees proper to be entered; keep in each court a register of action, as provided in the Code of Civil

Procedure, which must also state the names of the attorneys and all fees charged in each action, and a list of all the fees charged.

4. Keep for the district court, in separate volumes, an index of all suits, labeled "General Index—Plaintiffs," each page of which must be divided into seven columns, under their respective heads, alphabetically arranged as follows: "Number of Suit," "Plaintiffs," "Defendants," "Date of Judgement," "Number of Judgment," "Page of Entry of Judgment in Judgment Book," "Page of Minute Book of District Court;" also, an index labeled "General Index—Defendants," each page of which must be divided into seven columns under their respective heads, alphabetically arranged as follows: "Number of Suit," "Defendants," "Plaintiffs," "Date of Judgment," "Number of Judgment," "Page of Entry of Judgment in Judgment Book," "Page in Minute Book of District Court."

5. Keep a minute book, which must contain the daily proceedings of court, which may be signed by the clerk, which minute book must be indexed in the names of both defendant and plaintiff.

6. Keep a book called "Record of Probate Proceedings," which must contain all the orders and proceedings of the district court sitting in probate matters, as prescribed in part III., title XI., of the Code of Civil Procedure, which index must be indexed in the name of the deceased person, the executor or administrator, the guardian or ward.

7. Keep a book called the "Probate Record Book," in which must be recorded all wills, bonds, letters of administration, letters testamentary and other papers, as prescribed in part III., title XI., of the Code of Civil Procedure, which record must be indexed in like manner as the "Record of Probate Proceedings."

8. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organizations of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "Declaration of Intention to Become Citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "Naturalization—Final Papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him a citizen.

9. Keep a book, called "Register of Criminal Actions," in which must be entered the title and number of the action, with a memorandum of every paper filed, order or proceeding had therein, with the date thereof, and the name of every witness, number

FOR THE "INVERSE GENERAL INDEX" THUS:

Act approved Feby. 27, 1893.

3051. (§ 4443.) *Duties concerning same.*—Said clerk shall cause to be made in each of said index books correct entries under the appropriate headings of each and every action begun in the court of which he is clerk, entering them alphabetically by the name of the plaintiff in the “General Index” and alphabetically by the name of the defendants in the “Inverse General Index,” continuing to make such entries in the manner aforesaid from time to time as the progress of the case may require. [*Act approved Feby. 27, 1893.*]

ARTICLE VI.

COUNTY ATTORNEY.

Section 3052. Duties of county attorney.

“ 3053. *Legal advisor of board of county commissioners.*

“ 3054. *Authority to sue to recover money illegally paid.*

“ 3055. Must not advocate claims against his own county.

“ 3056. *Other duties.*

3052. *Duties of county attorney.*—The county attorney is the public prosecutor, and must:

I. Attend the district court and conduct on behalf of the State all prosecutions for public offenses, and represent the State in all matters and proceedings to which it is a party, or in which it may be beneficially interested, at all times and in all places within the limits of his county.

II. Institute proceedings before magistrates for the arrest of persons charged with, or reasonably suspected of, public offenses, when he has information that such offenses have been committed, and for that purpose, whenever not otherwise officially

engaged, must attend upon the magistrate in cases of arrest, and attend before and give advice to the grand jury whenever cases are presented to them for their consideration.

III. Draw all indictments and informations, defend all suits brought against the State or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the State or his county.

IV. Deliver receipts for money or property received in his official capacity, and file duplicates thereof with the county treasurer.

V. On the first Monday of January, April, July, and October, in each year, file with the county clerk an account, verified by his oath of all moneys received by him in his official capacity during the preceding three months, and at the same time pay it over to the county treasurer.

VI. Give when required, and without fee, his opinion in writing to the county, district and township officers, on matters relating to the duties of their respective offices.

VII. Keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially, and of the proceedings therein. [*Act approved February 20th, 1899, § 1.*] (6th Sess. 76-77.)

State v. Court, 22 Mont. 30; 55 Pac. 917. The county attorney is subject to the supervisory powers of the attorney general.

Independent P. Co. v. L. & C. Co.,

30 Mont. 85; 75 Pac. 861. After a criminal case has been appealed to the supreme court, the duties of the county attorney therein, and his power to contract expenses for the county cease.

3053. (§ 4451.) *Legal advisor of board of county commissioners.*—The county attorney is the legal advisor of the board of county commissioners. He must attend their meetings when required, and must attend and oppose all claims and accounts against the county which are unjust or illegal.

Merriam v. Barnum, 116 Cal., 621; 48 Pac. 727.

3054. (§ 4452.) *Authority to sue to recover money illegally paid.*—If the board of county commissioners, without authority of law, order any money paid as a salary, fees or for any other purposes, and such money has been actually paid; or if any other county officer has drawn any warrant or warrants in his own favor, or in favor of any other person, without being authorized thereto by the board of county commissioners or by law, and the same has been paid, the county attorney is empowered, and it is his duty to institute an action in the name of the county against such person or persons to recover the money so paid, and twenty-five per cent. damages for the use thereof; and no order of the board of county commissioners therefor is necessary to maintain such suit; but when the money has not been paid on such order or

warrants, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

3055. (§ 4453.) *Must not advocate claims against his own county.*—The county attorney, except for his own services, must not present any claim, account or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

3056. (§ 4454.) *Other duties.*—The county attorney must perform such other duties as are prescribed by law.

ARTICLE VII.

COUNTY SURVEYOR.

Section 3057. County surveyor to make surveys, keep record of them, furnish copies, etc.

“ 3058. *Surveys of lands in two counties.*

“ 3059. *Order for survey where title to lands in two counties disputed.*

“ 3060. *Courses to be run by true meridian; variation noted.*

“ 3061. *Surveyor to employ assistants, when.*

“ 3062. *Disinterested person, when to act in place of county surveyor.*

“ 3063. *Must inspect road work.*

“ 3064. *Must not be interested in contracts.*

“ 3065. *Other surveyor may be employed.*

3057. (§ 4470.) *County surveyor to make surveys, keep record of them, furnish copies, etc.*—The county surveyor must make any survey that may be required by order of the court, or upon application of any person, keep a correct and fair record of all surveys made by him, number them in the order made, progressively, and preserve a copy of the field notes and calculations of each survey, indorse thereon its proper number, a copy of which, and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. He must also keep a correct and plain record of all surveys made by him for the county or for individuals or corporations which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office. [Act approved March 18, 1895.]

3058. (§ 4471.) *Surveys of lands in two counties.*—Any person owning or claiming lands which are divided by county lines,

and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and on such application being made the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

3059. (§ 4472.) *Order for survey where title to lands in two counties disputed.*—When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

3060. (§ 4473.) *Courses to be run by true meridian; variation noted.*—In all surveys the courses must be expressed according to the true meridian, and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

3061. (§ 4474.) *Surveyor to employ assistants, when.*—If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers and receive the reasonable hire of all assistance necessarily employed.

3062. (§ 4475.) *Disinterested person, when to act in place of county surveyor.*—When the county surveyor is interested in any land, the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person, and the person so appointed is for the purpose authorized to administer and certify oaths. He must return such survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

3063. (§ 4476.) *Must inspect road work.*—The county surveyor shall also, at the direction of the county commissioners, direct and inspect the work and expenditures of the road supervisors; also furnish plans and specifications for road or bridge work, and he shall be chairman of all boards of road viewers. [Act approved March 18, 1895.]

3064. (§ 4477.) *Must not be interested in contracts.*—The county surveyor shall not be interested, directly or indirectly, in any contract for the construction or repair of roads or bridges under his charge, or in any claim or voucher for labor or material in connection with such repairs or construction. [Act approved March 18, 1895.]

3065. (§ 4478.) *Other surveyor may be employed.*—If the county surveyor neglect, refuse or be incompetent to perform the duties prescribed in § 3063 (4476), it shall be the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the law governing the county surveyor. [Act approved March 18, 1895.]

ARTICLE VIII.

CORONER.

Section 3066. Coroner to hold inquest.

“ 3067. *Coroner to bury body, when; expense of interment.*

“ 3068. *To deliver to the county treasurer, etc., property found on body.*

“ 3069. *Statement before allowing accounts of coroner.*

“ 3070. *Justice of peace to act as coroner in certain cases.*

“ 3071. *Coroner to discharge duties of sheriff, when.*

“ 3072. *Must keep register.*

3066. (§ 4490.) *Coroner to hold inquest.*—The coroner must hold inquests, as provided in chapter II., title XII., part II., of the Penal Code.

3067. (§ 4491.) *Coroner to bury body, when; expense of interment.*—When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial, the expenses are a legal charge against the county.

3068. (§ 4492.) *To deliver to the county treasurer, etc., property found on body.*—The coroner must, within thirty days after an inquest on a dead body, deliver to the county treasurer or the legal representatives of the deceased any money or other property found upon the dead body.

3069. (§ 4493.) *Statement before allowing accounts of coroner.*—Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement.

2. The disposition made of such property.

3070. (§ 4494.) *Justice of peace to act as coroner in certain cases.*—If the office of coroner is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county, with the like authority and subject to the same obligations and penalties as the coroner.

3071. (§ 4495.) *Coroner to discharge duties of sheriff, when.*—In the cases specified in article III., of this chapter, the coroner must discharge the duties of sheriff.

3072. (§ 4496.) *Must keep register.*—It is the duty of the coroner of each county to keep an official register, to be labeled,

"Coroner's Register," in which he must enter the date of holding all inquests, the name of the deceased, when known, and when not, such description of the deceased as may be sufficient for identification; property found on the person of the deceased, if any; what disposition of the same was made by the coroner; the cause of the death, when known, and any other information which may pertain to the identity of the deceased.

ARTICLE IX.

PUBLIC ADMINISTRATOR.

Section 3073. Duty of public administrator.

" 3074. *Must procure letters of administration.*

" 3075. *Duty of persons in whose house any stranger dies.*

" 3076. *Must return inventory. How to administer estate.*

" 3077. *When to deliver up estate.*

" 3078. *Civil officer to notify public administrator of waste.*

" 3079. *Actions by.*

" 3080. *Order to examine party charged with embezzlement.*

" 3081. *Punishment for refusing to attend.*

" 3082. *Order of judge to account.*

" 3083. *Every six months to make and publish condition of estates.*

" 3084. *Estate moneys, escheats, etc.*

" 3085. *Must not be interested or have partner.*

" 3086. *When to settle with clerk of district court.*

" 3087. *Proceedings against for failure to pay over money.*

" 3088. *Fees, how paid.*

" 3089. *May administer oaths.*

" 3090. *Court or judge may at any time require report and additional bonds.*

" 3091. *Provisions in Code of Civil Procedure applicable.*

" 3092. *Must keep register.*

3073. (§ 4510.) *Duty of public administrator.*—Every public administrator, duly elected, commissioned and qualified, must take charge of estates of persons dying within his county, as follows:

1. Of estates of decedents for which no administrators are appointed, in which, in consequence thereof, are being wasted, uncared for or lost.

2. Of estates of decedents who have no known heirs.

3. Of estates ordered into his hands by the court; and

4. Of estates upon which letters of administration have been issued to him by the court. [*Act approved March 14, 1895.*]

State v. Woody, 20 Mont. 413; 51 Pac. 975. The district court has jurisdiction to make an order appointing the public administrator administrator of an estate, although no petition for his appointment has been filed.

State v. Court, 25 Mont. 364; 65 Pac. 121.

Los Angeles v. Kellogg, 146 Cal. 592; 80 Pac. 861.

3074. (§ 4511.) *Must procure letters of administration.*—

Whenever a public administrator takes charge of an estate, under order of the court, he must, with all convenient dispatch, procure letters of administration thereon, in like manner and on like proceedings as letters of administration are issued to other persons. His official bond and oath are in lieu of the administrator's bond and oath, but when real estate is ordered to be sold, another bond must be required by the court.

State v. Woody, 20 Mont. 413; 51 Pac. 975.

O'Rourke v. Harper, 35 Mont. 349; 89 Pac. 66. A public administrator does not become *ex officio* administrator

of any estate, but must procure letters of administration in like manner as any other applicant for letters.

Los Angeles v. Kellogg, 146 Cal. 593; 80 Pac. 861.

3075. (§ 4512.) *Duty of persons in whose house any stranger dies.*—Whenever a stranger, or person without known heirs, dies intestate in the house or premises of another, the possessor of such premises, or any one knowing the facts, must give immediate notice thereof to the public administrator of the county; in default of so doing he is liable for any damage that may be sustained thereby, to be recovered by the public administrator or any person interested.

3076. (§ 4513.) *Must return inventory. How to administer estates.*—The public administrator must make out and return an inventory of all estates taken into his possession, administer and account for the same according to the provisions of this article, subject to the control and directions of the court.

Estate of Miner, 143 Cal. 202; 76 Pac. 968.

3077. (§ 4514.) *When to deliver up estates.*—If at any time letters testamentary or of administration are regularly granted to any other person on the estate of which the public administrator has charge, he must, under order of the court, account for, pay and deliver to the executor or administrator thus appointed, all the money, property, papers, and estate of every kind in his possession or under his control.

3078. (§ 4515.) *Civil officer to notify public administrator of waste.*—All civil officers must inform the public administrator of all property known to them, belonging to a decedent, which is liable to loss, injury or waste, and which, by reason thereof, ought to be in the possession of the public administrator.

3079. (§ 4516.) *Actions by.*—The public administrator must institute all actions and prosecutions necessary to recover the property, debts, papers, or other estate of the decedent.

3080. (§ 4517.) *Order to examine party charged with embezzlement.*—When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, embezzled or disposed of, or has in his possession any money, goods, property, or effects, to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear, and may examine him on oath touching the matter of such complaint.

3081. (§ 4518.) *Punishment for refusing to attend.*—All such interrogatories and answers must be reduced to writing and signed by the party examined, and filed in the court. If the person so cited refuses to appear and submit to such examination, or to answer such interrogatories as may be put to him touching the matter of such complaint, the court or judge may commit him to the county jail, there to remain in close custody until he submits to the order of the court or judge.

3082. (§ 4519.) *Order of judge to account.*—The court or judge may at any time order the public administrator to account for and deliver all the money of an estate in his hands to the heirs, or to the executors or administrators regularly appointed.

3083. (§ 4520.) *Every six months to make and publish condition of estates.*—The public administrator must, once in every six months, make to the district court or a judge thereof, under oath, a return of all estates of decedents which have come into his hands, the value of the same, the money which has come into his hands from each estate, and what he has done with it, and the amount of his fees and expenses incurred, and the balance, if any, remaining in his hands; publish the same once in each week for six weeks in some newspaper published in the county, or if there is none, then post the same, legibly written or printed, in the office of the clerk of the district court of the county.

3084. (§ 4521.) *Estate moneys, escheats, etc.*—It is the duty of every public administrator, as soon as he receives the same, to deposit with the county treasurer of the county in which probate proceedings are pending, all moneys of the estate not required for the current expenses of the administration, and such moneys may be drawn upon the order of the executor or administrator, countersigned by a district judge, when required for the purposes of administration. It is the duty of the county treasurer to receive and safely keep all such moneys, and pay them out upon the order of the executor or administrator, when countersigned by a district judge, and not otherwise, and keep an account with such estate of all moneys received and paid to him; and for the safe keeping and payment of all such moneys as herein provided the said treasurer and his sureties are liable upon his official bond. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United

States, or of this state, when such investment is for the best interests of the estate. After the final settlement of any estate, if there be no heirs, or other claimants thereof, the county treasurer must pay into the state treasury all moneys and effects in his hands belonging to the estate, upon order of the court or judge; and if any such moneys and effects escheat to the state, they must be disposed of as other escheated estates.

State v. Court, 25 Mont. 364; 65 Pac. 121.

Raban v. Cascade Bank, 33 Mont. 416; 84 Pac. 73. The mingling of all funds received by a public administrator

from different estates in one general deposit in a bank, contrary to this section, constitutes conversion.

Estate of Miner, 143 Cal. 196; 76 Pac. 968.

3085. (§ 4522.) *Must not be interested or have partner.*—The public administrator must not be interested in the expenditures of any kind, made on account of any estate he administers; nor must he be associated, in business or otherwise, with any one who is so interested, and he must attach to his report and publication, made in accordance with the preceding section, his affidavit to that effect.

3086. (§ 4523.) *When to settle with clerk of district court.*—The public administrator is required to account under oath, and to settle and adjust his accounts, relating to the care and disbursement of money or property belonging to estates in his hands, with the clerk of the district court, on the first Monday of each month, and he must pay to the county treasurer any money remaining in his hands of an estate unclaimed, as provided in § 7692 (2882) to § 7695 (2885) of the Code of Civil Procedure, both inclusive.

3087. (§ 4524.) *Proceedings against for failure to pay over money.*—When it appears from the returns made in pursuance of the foregoing sections that any money remains in the hands of the public administrator after final settlement of the estate unclaimed which should be paid over to the county treasurer; the court or judge must order the same paid over to the county treasurer; and on failure of the public administrator to comply with the order within ten days after the same is made, the county attorney must immediately institute the requisite proceedings against the public administrator for a judgment against him and the sureties on his official bond in the amount of the money so withheld and costs.

Los Angeles v. Kellogg, 146 Cal. 594; 80 Pac. 861.

3088. (§ 4525) *Fees, how paid*—The fees of all officers chargeable to estates in the hands of public administrators must be paid out of the assets thereof as soon as the same come into his hands.

3089. (§ 4526.) *May administer oaths.*—Public administrators may administer oaths in regard to all matters touching the discharge of their duties or the administration of estates in their hands.

3090. (§ 4527.) *Court or judge may at any time require report and additional bonds.*—The court or judge may at any time

require the public administrator to report the amount of moneys and property of any estate in his hands, and may require him at any time to file additional bond or bonds.

3091. (§ 4528.) *Provisions in Code of Civil Procedure applicable.*—When no direction is given in this chapter for the government or guidance of a public administrator in the discharge of his duties, or for the administration of an estate in his hands, the provisions of part III., title XI., Code of Civil Procedure, must govern.

Mulville v. P. I. Co., 19 Mont. 103; 47 Pac. 653. The public administrator has the same power to compromise claims as an administrator or executor.

3092. (§ 4529.) *Must keep register.*—It is the duty of the public administrator to keep a book, to be labeled "Register of Public Administrator," in which he must enter the name of every deceased person on whose estate he administers; the date of granting letters, money received, the property and its value, proceeds of all sales of property, the amount of his fees, the expenses of administration, the amount of the estate after all charges and expenses have been paid, the disposition of the property on distribution, the date of discharge of administrator, and such other matters as may be necessary to give a full and complete history of each estate administered by him.

ARTICLE X.

ASSESSORS. SCHOOL SUPERINTENDENTS. ROAD SUPERVISOR.

Section 3093. Duties of assessor.

" 3094. *Duties of county superintendents of common schools.*

" 3095. *Duties of road supervisors.*

3093. (§ 4540.) *Duties of assessor.*—The assessor must perform such duties as are prescribed in title IX., part III., of this code.

3094. (§ 4541.) *Duties of county superintendents of common schools.*—The county superintendent of common schools must perform such duties as are prescribed in title III., part III., of this code.

3095. (§ 4542.) *Duties of road supervisors.*—The road supervisors must perform such duties as are prescribed in title VI., part III., of this code.

ARTICLE XI.

CONSTABLES, JUSTICES OF THE PEACE AND INFERIOR OFFICERS.

Section 3096. Constables to attend justices' courts.

" 3097. *Bond of constable.*

" 3098. *Governed by the law prescribing sheriffs' duties.*

" 3099. *Duties of justices of the peace.*

3096. (§ 4550.) *Constables to attend justices' courts.*—Constables must attend the courts of justices of the peace within their townships whenever so required, and within their counties, execute, serve and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

3097. *Bond of constable.*—Every constable elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office, be required to execute an undertaking to the state of Montana in the penal sum of two thousand dollars, with two sufficient sureties, and comply with the previous section, as justices of the peace are required by law to do. [*Act approved February 19th, 1901, § 2.*] (7th Sess. 90-1.)

3098. (§ 4551.) *Governed by the prescribing sheriffs' duties.*—All the provisions of article III., of this chapter, except the fourth and sixth subdivisions of § 3010 (4381), apply to constables, and govern their powers, duties and liabilities.

3099. (§ 4552.) *Duties of justices of the peace.*—Justices of the peace must perform such duties as are prescribed in title XI., part II., of the Code of Civil Procedure, and such other duties as are prescribed by law.

ARTICLE XII.

COUNTY AUDITOR.

Section 3100. Office of, created.

" 3101. *Election. Term. Qualifications.*

" 3102. *Oath. Bond.*

" 3103. *Residence. Salary.*

" 3104. *May administer oath.*

" 3105. *Must keep records.*

" 3106. *Must audit and investigate claims.*

" 3107. *Must record list of claims.*

" 3108. *Must examine books and accounts.*

" 3109. *County superintendent of poor.*

" 3110. *Other duties.*

3100. (§ 4560.) *Office of, created.*—That the office of county auditor is hereby created, and the same shall exist in all counties in the state of Montana which now have or those which may hereafter acquire a total assessment of not less than eight million dollars, and the governor shall, within sixty days after the passage of this act, appoint some male person possessing the qualifications hereinafter prescribed in each and every county having the necessary valuation to serve as county auditor in the

county for which he may be appointed until the first Monday in January, A. D., 1893, and until his successor is elected and qualified. [*Act approved March 7, 1891.*]

State v. Dickinson, 26 Mont. 394; 68 Pac. 470.

3101. (§ 4561.) *Election. Term. Qualifications.*—There shall be elected in and for each county having the necessary assessable valuation as hereinbefore stated, at the general election to be held in November, 1892, and quadrennially thereafter some male person to serve as county auditor of the county for which he shall be elected for the term of four years and until his successor shall be elected and qualified, the term to begin on the first Monday in January succeeding his election. No person shall be eligible to the office of county auditor of any county within the state who shall not have arrived at the age of twenty-one years and who shall not have been, for at least two years next preceding his election, a bona fide resident of the county for which he shall be elected or appointed. [*Act approved March 7, 1891.*]

3102. (§ 4562.) *Oath. Bond.*—Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such an oath as is required of other county officers, and shall execute a bond to the county in which he shall have been elected or appointed in the penal sum of fifteen thousand dollars, with at least two good and sufficient sureties for the faithful discharge of the duties of his office; said bond shall be approved by the board of county commissioners of the county, which said bond, together with the oath of office, shall be filed with the county clerk and recorder of said county. [*Act approved March 7, 1891.*]

3103. (§ 4563.) *Residence. Salary.*—The county auditor shall reside and keep his principal office at the county seat of the county for which he shall have been elected or appointed, and he shall receive a yearly salary of fifteen hundred dollars, payable quarterly by warrants drawn on the treasury of the county treasurer, and shall receive no other compensation or emolument whatsoever for any service or services rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county, other than the county seat, and then only after the same has been ordered and advised by the board of county commissioners. [*Act approved March 7, 1891.*]

3104. (§ 4564.) *May administer oath.*—The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices, and shall have power to issue process and compel the attendance of witnesses before them and examine into any matter they may deem necessary, and any witness attending be-

fore such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases. [*Act approved March 7, 1891.*]

3105. (§ 4565.) *Must keep records.*—The county auditor shall carefully preserve all documents, books, records and other papers required to be kept in his office, and each county auditor on going out of office shall deliver over to his successor in office all documents, books, records and property in his hands belonging to the county. [*Act approved March 7, 1891.*]

3106. (§ 4566.) *Must audit and investigate claims.*—It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine into all claims presented to him and report the same with his findings to the board of county commissioners at their regular session after such investigation shall have been completed with his approval or disapproval indorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose. In all counties having a county auditor, all bills, claims, accounts or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners shall be investigated, examined and inspected by the county auditor, who shall indorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn. In all counties having a county auditor, no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; *Provided*, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same. [*Act approved March 7, 1891.*]

3107. (§ 4567.) *Must record list of claims.*—The county clerk and recorder shall return to the county auditor within ten days after the adjournment of each session of the board of county commissioners a list of the claims allowed or rejected either in whole or in part by them, which list shall be recorded by the auditor in a book kept for that purpose and carefully preserved in his office. [*Act approved March 7, 1891.*]

3108. (§ 4568.) *Must examine books and accounts.*—It shall be the duty of the county auditor to make an examination of the books and accounts of the county treasurer, the county clerk and recorder, the sheriff and clerk of the district court, and all other county and township officers within fifteen days next preceding each regular session of the board of county commissioners at their next session immediately following

such examination, unless a longer time be granted him by the board in which to report the same, and said report shall contain a full and complete statement of the moneys received and disbursed by each of the said officers since the last examination and report of the same, and for this purpose the county auditor shall have free access to all books and papers in each of said offices. [Act approved March 7, 1891.]

3109. (§ 4569.) *County superintendent of poor.*—The county auditor hereby created is also made county superintendent of the poor, whose duty it shall be, under such rules and regulations as may be prescribed by the county commissioners, to care for and examine all claims that may be made upon the county for charity; also to have, under the direction of the county commissioners, general supervision of the county poor house or farm. [Act approved March 7, 1891.]

3110. (§ 4570.) *Other duties.*—The county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners; *Provided*, a reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this bill. [Act approved March 7, 1891.]

CHAPTER IV.

SALARIES AND FEES OF OFFICERS.

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|---------|-------|--|
| Section | 3111. | <i>Mileage of all officers.</i> |
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| " | 3113. | <i>What officers to receive fees for their own use.</i> |
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- " 3136. *Appointment of deputies.*
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- “ 3185. *Clerk must keep a record of witnesses in criminal actions.*
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- “ 3187. *Witnesses in criminal actions or coroners' inquests.*
- “ 3188. *In civil actions must be paid by party subpoenaing.*
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- “ 3190. *In criminal actions not more than six to be subpoenaed without order of court.*
- “ 3191. *Interpreters to be paid as witnesses.*
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- “ 3194. *County commissioners' fees.*
- “ 3195. *County superintendent's traveling expenses.*
- “ 3196. *County commissioners to audit claims.*
- “ 3197. *Limitation of chapter.*

3111. (§ 4590.) *Mileage of all officers.*—That members of the Legislative Assembly, state officers, county officers, township officers, jurors, witnesses and other persons who may be entitled to mileage shall be entitled to collect mileage at the rate of ten cents per mile for the distance actually traveled and no more. [Act approved March 7, 1895.]

Wade v. Lewis and Clark Co., 24 Mont. 336; 61 Pac. 879. A county surveyor is not entitled to mileage. The phrase "who may be entitled to mileage" not only limits the phrase "other persons" but also qualifies the phrase "county officers".

3112. (§ 4591.) *Fees received by county officers to be paid into the county treasury.*—The salaries of all county officers are as prescribed in this chapter. No county officer, except as provided in this chapter, must receive for his own use any fees, penalties or emoluments, for any official service rendered by him, but all fees, penalties and emoluments of every kind, must be collected by him for the sole use of the county, and are public moneys belonging to the county, and must be accounted for and paid into the county treasury, as provided in this chapter, and the county treasurer must place all of such fees in the contingent fund of the county.

3113. (§ 4592.) *What officers to receive fees for their own use.*—The county surveyor, coroner, public administrator, justice of the peace, and constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries.

Scharrenbroich v. L. & C. Co., 33 Mont. 257; 83 Pac. 483. The last sentence is unnecessarily put into this section.

3114. *Justices not to practice law.*—No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office. [Act approved March 22nd, 1901, § 3.] (7th Sess. 92.)

3115. (§ 4593.) *Counties classified.*—The counties are classified, for the purposes of this chapter, as prescribed in § 2973 (4328) of this code.

3116. (§ 4594.) *Salaries of county officers classified.*—The county officers are entitled to receive as an annual compensation or salary for services according to the following classification, to-wit:

FIRST CLASS.

Treasurer, three thousand five hundred dollars.

Sheriff, four thousand five hundred dollars.

Assessor, three thousand dollars.

County clerk, three thousand five hundred dollars.

County auditor, two thousand five hundred dollars.

Clerk of the district court, three thousand five hundred dollars.

County attorney, three thousand dollars.

County superintendent of common schools two thousand dollars.

SECOND CLASS.

Treasurer, three thousand dollars.

Sheriff, three thousand five hundred dollars.

Assessor, two thousand five hundred dollars.

County clerk, three thousand dollars.

County auditor, two thousand dollars.

Clerk of the district court, three thousand dollars.

County attorney, two thousand five hundred dollars.

County superintendent of common schools, one thousand five hundred dollars.

THIRD CLASS.

Treasurer, three thousand dollars.

Sheriff, three thousand five hundred dollars.

Assessor, two thousand two hundred and fifty dollars.

Auditor, one thousand seven hundred and fifty dollars.

County clerk, two thousand seven hundred and fifty dollars.

Clerk of the district court, two thousand seven hundred and fifty dollars.

County attorney, two thousand five hundred dollars.

County superintendent of common schools, one thousand five hundred dollars.

FOURTH CLASS.

Treasurer, two thousand five hundred dollars.

Sheriff, two thousand seven hundred and fifty dollars.

Assessor, two thousand dollars.

County clerk, two thousand five hundred dollars.

Clerk of the district court, two thousand five hundred dollars.

County attorney, two thousand dollars.

Superintendent of common schools, one thousand five hundred dollars.

FIFTH CLASS.

Treasurer, two thousand five hundred dollars.

Sheriff, two thousand seven hundred and fifty dollars.

Assessor, one thousand eight hundred dollars.

County clerk, two thousand dollars.

Clerk of the district court, two thousand dollars.

County attorney, two thousand dollars.

Superintendent of common schools, one thousand five hundred dollars.

SIXTH CLASS.

Treasurer, two thousand dollars.
 Sheriff, two thousand two hundred and fifty dollars.
 Assessor, one thousand five hundred dollars.
 County clerk, two thousand dollars.
 Clerk of the district court, one thousand eight hundred dollars.
 County attorney, one thousand five hundred dollars.
 Superintendent of common schools, one thousand two hundred dollars.

SEVENTH CLASS.

Treasurer, one thousand eight hundred dollars.
 Sheriff, two thousand dollars.
 Assessor, one thousand two hundred dollars.
 County clerk, one thousand eight hundred dollars.
 Clerk of the district court, one thousand two hundred dollars.
 County attorney, one thousand two hundred dollars.
 Superintendent of common schools, eight hundred dollars.

EIGHTH CLASS.

Treasurer, one thousand five hundred dollars.
 Sheriff, one thousand eight hundred dollars.
 Assessor, one thousand dollars.
 County clerk, one thousand two hundred dollars.
 Clerk of the district court, one thousand two hundred dollars.
 County attorney, one thousand dollars.
 Superintendent of common schools, six hundred dollars. [*Act approved March 19, 1895.*]

Jobb v. Meagher Co., 20 Mont. 424; 51 Pac. 1034. The board of county commissioners has the power to determine, within the maximum limits prescribed by law, the number and com-

pensation of deputies allowed by the sheriff.

Penwell v. Commissioners, 23 Mont. 356; 59 Pac. 167.

3117. (§ 4595.) *Salaries, how paid.*—The salaries must be paid quarterly out of the contingent fund of the county upon the order of the board of county commissioners, except the salary of the county attorney, which is payable quarterly, one-half from the contingent fund of the county upon the order of the board of county commissioners, and the other one-half from the state treasury upon the warrant of the state auditor, upon the presentation of a certificate from the board of county commissioners stating the amount for which the same is to be drawn.

3118. (§ 4596.) *Salaries of deputies and classification.*—The maximum annual compensation allowed to any deputy or assistant is as follows:

FIRST AND SECOND CLASSES.

Under sheriff not to exceed eighteen hundred dollars.
 Each deputy sheriff not to exceed twelve hundred dollars.
 Each deputy clerk not to exceed twelve hundred dollars.

Chief deputy clerk of the district court not to exceed fifteen hundred dollars.

Other deputy clerks of the district court not to exceed twelve hundred dollars.

Deputy treasurer not to exceed twelve hundred dollars.

Deputy assessor not to exceed twelve hundred dollars.

Chief deputy county attorney eighteen hundred dollars.

Other deputy county attorneys fifteen hundred dollars.

THIRD, FOURTH AND FIFTH CLASSES.

Under sheriff not to exceed fifteen hundred dollars.

Each deputy sheriff not to exceed twelve hundred dollars.

Deputy clerk not to exceed twelve hundred dollars.

Deputy clerk of the district court not to exceed twelve hundred dollars.

SIXTH, SEVENTH AND EIGHTH CLASSES.

Under sheriff not to exceed twelve hundred dollars.

Each deputy sheriff not to exceed one thousand dollars.

Deputy clerk not to exceed one thousand dollars.

Deputy clerk of the district court, nine hundred dollars. [*Act approved March 19, 1895.*]

Jobb. v. Meagher Co., 20 Mont. 424; 51 Pac. 1034.

Penwell v. Commissioners, 23 Mont. 351; 59 Pac. 167. The compensation of chief deputy county attorney was not fixed by the statute at a certain sum,

but might be established at a sum less than the maximum named, provided the power to determine the number of deputies and their compensation, within the maximum limits, may be exercised by the board of county commissioners.

3119. *Maximum number of deputy clerks and sheriffs.*—The whole number of deputies allowed the County Clerk in counties of the first and second classes must not exceed six, in counties of the third class, three; in counties of the fourth and fifth class, two; in counties of the sixth, seventh and eighth classes, one. The whole number of deputies allowed the Clerk of the District Court in counties of the first and second classes must not exceed one chief deputy, and deputies to the number of six; in counties of the third and fourth classes having more than one District Judge, three; in counties of the third and fourth classes having one District Judge, two; in counties of the fifth, sixth and seventh and eighth classes, one. The whole number of deputies allowed the Sheriff is one under sheriff, and in addition not to exceed the following number of deputies: In counties of the first and second classes, six; in counties of the third and fourth classes, two; in counties of the fifth, sixth, seventh and eighth classes, one. The Sheriff in counties of the first, second and third classes may appoint two deputies, and in the fourth, fifth, sixth, seventh and eighth classes, one deputy, who shall act as jailors at a salary not to exceed Ninety Dollars per month. [*Act approved March 3, 1905, § 1.*] (*9th Sess. Chap. 75.*)

3120. *Deputy sheriffs in counties of first class.*—That in counties of the first class the whole number of deputies allowed the sheriff is one under sheriff, as provided for in sections 3118 (4596) and 3119 (4597) of the Political Code of Montana, and in addition thereto one chief deputy and clerk and not to exceed thirteen deputy sheriffs. [Act approved March 4, 1905, § 1.] (9th Sess. Chap. 94.)

3121. *Same, compensation.*—The maximum annual compensation allowed any deputy or assistant in a county of such class is as follows: Each deputy and clerk not to exceed eighteen hundred dollars. Each deputy sheriff not to exceed twelve hundred dollars. [Act approved March 4, 1905, § 2.] (9th Sess. Chap. 94.)

3122. *Deputy clerks of courts in counties of first class.*—In Counties of the First Class, the Clerk of the District Court thereof may appoint one Chief Deputy who shall be paid a salary of Eighteen Hundred and no-100 Dollars per annum, one Deputy Clerk for each department of the District Court who shall be paid a salary of Fifteen Hundred and no-100 Dollars per annum and Six Deputies who shall be paid a salary of Twelve Hundred and no-100 Dollars per annum. [Act approved March 4, 1905, § 1.] (9th Sess. Chap. 89.)

3123. *Extra deputies for county officers.*—That the Board of County Commissioners in each County is hereby authorized to allow to the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the Board of County Commissioners, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office, and to fix the salary of such deputies appointed in excess of the maximum allowed by law; *provided*, such salary shall not exceed the maximum salary of deputies provided by law. [Act approved March 9, 1907, § 1.] (10th Sess. Chap. 178.)

3124. (§ 4598.) *Qualification of deputy sheriffs.*—That no sheriff of a county, mayor of a city or other persons authorized by law to appoint special deputies, marshals or policemen in this state to preserve the public peace and prevent or quell public disturbance shall hereafter appoint as such special deputies, marshals or policemen, any person who shall not have resided continuously in this state for a period of one year at least and in the county where such appointment is made for the period of at least six months prior to the date of said appointment; *Provided*, That the provisions of this section shall not apply in cases of such officers summoning a posse forthwith to quell public disturbance or domestic violence. [Act approved Feby. 13, 1893.]

3125. (§ 4599.) *Non-resident deputies.*—That it shall be unlawful for any person or persons, company, association or corporation to bring or import into this state, or who shall cause or in

any wise aid in bringing, or import into this state, any person or persons or association of persons for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, marshals, policemen or constables or peace officers in the protection or preservation of public or private property or in the punishment of any person violating the criminal laws of this state. [*Act approved Feby. 13, 1893.*]

3126. (§ 4600.) *Personating officer*.—That any person or persons who shall in this state, without due authority, exercise, or attempt to exercise, the functions of, or hold himself or themselves out to any one as a deputy sheriff, marshal or policeman, constable or peace officer, shall be deemed guilty of a felony and upon conviction thereof shall, in the discretion of the court or jury, be imprisoned in the penitentiary for any period not less than one year nor more than three years, to which may be added a fine not less than one hundred dollars nor more than five hundred dollars, together with the costs of prosecution. [*Act approved Feby. 13, 1893.*]

3127. (§ 4601.) *Penalty*.—Any person, company or association, who shall violate any of the provisions of this act, shall, upon conviction, be deemed guilty of a felony and shall be punished by imprisonment in the penitentiary for a term of not less than one year, nor more than three years. [*Act approved Feby. 13, 1893.*]

3128. *Maximum number of deputy treasurers, auditors and county attorneys*.—The whole number of deputies allowed the County Treasurer must not exceed in counties of the first class, two; in counties of the second, third and fourth classes, one; in counties of the fifth, sixth, seventh and eighth classes, no deputies must be allowed; *provided*, that the Board of County Commissioners may allow such deputies as may be necessary during the months of November and December of each year. In counties of the first, second and third classes, Assessors may be allowed one deputy, and during the months of March, April, May, June, July and August, not to exceed two additional deputies at a salary not exceeding One Hundred Dollars per month; in counties of all other classes Assessors may be allowed one deputy during the months of March, April, May, June and July, at a salary not exceeding One Hundred Dollars per month. The whole number of deputies allowed to County Auditors in counties of the first and second and third classes must not exceed one. The whole number of deputies allowed the County Attorney in counties of the first and second class must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the Board of County Commissioners, not to exceed one chief deputy and one deputy. [*Act approved March 3, 1905, § 2.*] (*9th Sess. Chap. 75.*)

3129. *Deputy treasurer in counties of first class.*—In counties of the First Class, the Treasurer thereof may appoint one Chief Deputy, at a Salary of Two Thousand and no-100 Dollars per annum, one Deputy at a salary of Fifteen Hundred and no-100 Dollars per annum, and one Deputy at a salary of Twelve Hundred and no-100 Dollars per annum; and said Treasurer may also appoint for the months of October, November, December and January two additional deputies at a salary at the rate of One Hundred and no-100 Dollars per month. [Act approved March 4, 1905, § 1.] (9th Sess. Chap. 97.)

3130. *Deputy auditors in counties of first class.*—In counties of the First Class, County Auditors may appoint not to exceed two deputies. The salary of such deputies shall not exceed the sum of One Hundred Dollars (\$100.00) per month. [Act approved March 4, 1905, § 1.] (9th Sess. Chap. 88.)

3131. *Assistant and deputy county attorneys in counties of first and second class.*—That the whole number of assistants and deputies allowed the county attorney in counties of the first and second class must not exceed two assistant county attorneys and one deputy county attorney. [Act approved March 4th, 1901, § 1.] (7th Sess. 96.)

3132. *Maximum compensation of assistant county attorney.*—That the maximum annual compensation allowed to the assistant county attorneys named in § 3131 (1) of this Act is eighteen hundred (\$1800.00) dollars per annum each, and the maximum annual compensation of the deputy named in § 3131 (1) of this Act shall be fifteen hundred (\$1,500.00) dollars per annum. [Act approved March 4th, 1901, § 2.] (7th Sess. 96.)

3133. *Qualification of assistants.*—That all assistants and deputies named and appointed under the provisions of this Act shall be learned in the law and admitted to practice in the Supreme Court of the State of Montana before they shall have been appointed assistant or deputy county attorney. [Act approved March 4th, 1901, § 3.] (7th Sess. 96.)

3134. *County attorneys to appoint assistants in counties of first and second class.*—That county attorneys of counties of the first and second class shall have the power and authority to name and appoint the assistants and deputy provided for in this Act, and to revoke their said appointments. [Act approved March 4th, 1901, § 4.] (7th Sess. 96-7.)

3135. *County commissioners to fix compensation of assistants.*—That the county commissioners of all counties shall have the power and authority to fix and determine the compensation allowed assistant and deputy county attorneys in their respective counties, not to exceed, however, the maximum sums allowed by this Act. [Act approved March 4th, 1901, § 5.] (7th Sess. 97.)

3136. (§ 4603.) *Appointment of deputies.*—The number of deputies allowed to county officers and their compensation must not exceed the maximum limits prescribed in this chapter. The officers entitled to deputies must within thirty days after this code takes effect file a certificate of appointment of the deputies in their office with the county clerk. The salaries must be allowed and paid monthly upon the order of the board of county commissioners and paid out of the contingent fund. [*Act approved March 19, 1895.*]

Jobb v. Meagher Co., 20 Mont. 424;
51 Pac. 1034.

Penwell v. Commissioners, 23 Mont.
354; 59 Pac. 168.

3137. *Mileage and expense of sheriff.*—Sheriffs delivering prisoners at the State Prison, or at the State Reform School, or Insane persons at the State Insane Asylum, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the Sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said Sheriff shall be audited and allowed by the State Board of Examiners or by the Board of County Commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the State or Counties, and no other or further compensation shall be received by Sheriffs for such expenses. While in the discharge of his duties both civil and criminal, except as hereinbefore provided, the Sheriff shall receive Ten Cents per mile for each and every mile actually and necessarily traveled and for transporting any person by order of Court, except as hereinbefore provided, he shall receive Ten Cents additional per mile, the same to be in full for transporting and dieting of such person during such transportation. The County shall not be liable for nor shall the Board of County Commissioners pay, for any claim of the Sheriff or other officer, for team or horse hire, or any other expense incurred in travel or for subsistence in cases where mileage is allowed under this Section; the fees for mileage named in this Section being in full for all such traveling expenses in both civil and criminal work. [*Act approved March 3, 1905, § 1.*] (9th Sess. Chap. 86.)

Proctor v. Cascade Co., 20 Mont. 315;
50 Pac. 1017.

Mont. 256; 83 Pac. 482. This section
is constitutional.

Scharrenbroich v. L. & C. Co., 33

3138. (§ 4605.) *Fees for board of prisoners.*—The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be fifty cents per day for each of said prisoners, and for each person committed to the county jail as a witness the said sheriff shall receive the sum of seventy-five cents per day. [*Act approved March 15, 1895.*]

3139. (§ 4606.) *Fees must be paid into county treasury, when.*—All salaried officers of the several counties must charge and collect for the use of their respective counties, and pay into the county treasury on the first Monday in each month, all the fees now or hereafter allowed by law, paid or chargeable in all cases except as provided in § 7178 (1875) of the Code of Civil Procedure; *Provided, however* that nothing in this section shall be held to apply to the compensation received by the sheriff as mileage while in the performance of official duties, or for the board of prisoners or other persons while in his custody. [*Act approved March 15, 1895.*]

3140. (§ 4607.) *Statement and affidavit of fees collected.*—The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month, and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making such payment. The affidavit must be in the following form:

State of Montana, }
County of ——. }

I, —, of the county —, do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature, for official services rendered by me, paid or chargeable, or by my deputies or assistants, for the month of —, A. D. 18—, and that said fee book shows the full amount received or chargeable in said month, and since my last monthly payment; and neither myself, nor, to my knowledge or belief, any of my deputies or assistants, have rendered any official services, except for the county or state, which is not fully set out in said fee book; and that the foregoing statement thereof is a full, true, and correct copy thereof. Subscribed and sworn to before me this — day of —, 18—.

3141. (§ 4608.) *Treasurer to file affidavits and statements.*—The treasurer must file and preserve in his office said statements and affidavits, and must issue to the officer one original and one duplicate receipt therefor, and the officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

3142. (§ 4609.) *Payment of salary not to be made until statement and report filed.*—The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this chapter, and filed the report prescribed in § 2981 (4336) of this code.

3143. (§ 4610.) *Board not to allow compensation of deputies until affidavit filed.*—The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana, }
County of ——. }

I do swear that I have rendered services as deputy ——— for the month of ———, 18—, and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit, and that I have not paid, deposited or assigned, nor contracted to pay, deposit or assign any part of such compensation, for the use of any other person, nor in any way, directly or indirectly, paid or given, nor contracted to pay or give any reward or compensation for my appointment to office, or the emoluments thereof, to my principal or to any other person.

Sworn to and subscribed before me this ——— day of ——— 18—.

3144. (§ 4611.) *Fees must be paid in advance.*—The officers mentioned in this chapter must not, in any case perform any official services unless the fees prescribed for such services are paid in advance, and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

3145. (§ 4612.) *No fees to be charged state, county or public officer.*—No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

3146. *Fees for naturalization.*—The Clerk of the District Court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, a fee of Two Dollars and fifty cents (\$2.50); and no other fee shall be charged for naturalization papers, or for the record thereof. [*Act approved February 22nd, 1899, § 1.*] (6th Sess. 50.)

3147. (§ 4614.) *Officer must give items and receipt.*—Every officer, upon receiving any fees for official duty, or service, may be required by the person paying the same to make out in writing, and deliver to such person, a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same; and if he refuse or neglect so to do when required, he is liable to the party paying the same in treble the amount so paid.

3148. (§ 4615.) *Must keep statement posted in his office.*—It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by

law; a failure so to do subjects the officer to a fine of one hundred dollars and costs, to be recovered by the county attorney in the name of the state.

3149. (§ 4616.) *Officer must not receive any other fees than those named.*—The officers above named must receive no other fees for any services performed by them in any action or proceeding, or for the performance of any service for which fees are allowed; and in case of any violation of the provisions of this chapter, the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, besides costs of suit.

3150. (§ 4617.) *May demand fees for publication of notice.*—When, by law, any publication is required to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted before the officer is compelled to make such publication.

3151. (§ 4618.) *What term folio means.*—The term “folio,” when used as a measure for computing fees, means one hundred words, counting every two figures necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

3152. (§ 4619.) *Mileage, how computed.*—When any sheriff, constable, or coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than one mile actually traveled.

3153. (§ 4620.) *Witnesses on behalf of state or county.*—The attorney general, or any county attorney, is authorized to cause subpoenas to be issued, and compel the attendance of witnesses on behalf of the state, or county, without paying or tendering fees in advance, to either officers or witnesses; and any witness refusing to or failing to attend, after being served with a subpoena, may be proceeded against, and is liable in the same manner as is provided by law in other cases where fees have been tendered or paid.

3154. (§ 4621.) *Certificate of clerk to witness.*—The clerk of any court before which any witness shall have attended on behalf of the state, or county, in any civil action, must give to such witness a certificate, under seal, of travel and attendance, which shall entitle him to receive the amount therein stated from the state or county treasurer.

3155. (§ 4622.) *Preceding sections construed.*—The provisions of the two preceding sections of this chapter shall extend

to all actions and proceedings brought in the name of the attorney general, or any other person or persons, for the benefit of the state or county.

3156. (§ 4623.) *Officers to complete the business of their offices.*—It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms; and in case any officer, at the close of his term, leaves to his successor official labor to be performed, for which he has received compensation, or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction, upon action brought against him on his official bond.

3157. (§ 4624.) *Penalty for false oath.*—Every person who takes a false oath, under the provisions of this chapter, is punishable as provided in § 8234 (240) of the Penal Code.

3158. (§ 4625.) *Penalty for failure to pay over fees.*—Every officer who fails or refuses to pay over any fees collected by him to the county treasurer, or fails to collect the same, as provided by this chapter, is punishable as provided in § 8593 (771) of the Penal Code.

3159. (§ 4626.) *Penalty for making false report.*—Every officer who makes a false report of the fees received by him is guilty of a felony and punishable as provided in § 8110 (18) of the Penal Code.

3160. (§ 4627.) *Penalty for sheriff falsely representing his mileage.*—Every sheriff who falsely represents to the board of county commissioners or board of examiners his actual traveling expenses in the performance of any official duty, or causes to be paid to him from the state or any county treasury, a sum exceeding his actual expenses in the performance of such duty, is punishable as provided in §§ 8110 (18) and 8608 (786) of the Penal Code.

3161. (§ 4628.) *Sheriff falsely representing his expenses for boarding prisoners.*—Every sheriff who falsely represents to the board of county commissioners the actual expenses of boarding prisoners or for furnishing food and supplies therefor or for any service rendered in connection therewith, or presents to said board false items in a claim or false vouchers, or makes any profit whatever out of the board or keeping of prisoners in his custody; and every person who gives a false item or false voucher to be used by such sheriff in any claim against the county before such board, is punishable as provided in §§ 8110 (18) and 8608 (786) of the Penal Code.

3162. (§ 4629.) *Board of county commissioners to declare office vacant, when.*—The board of county commissioners, upon receiving a certified copy of the record of conviction of any officer

for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon proof thereof, must declare his office vacant and appoint his successor.

3163. (§ 4630.) *Fees of secretary of state and state auditor.*—The fees of public officers in the state are as follows, which must be charged and collected for the use of the state and counties, respectively:

SECRETARY OF STATE.

The fees of the secretary of state are specified in § 165 (410), of this code.

STATE AUDITOR.

For filing and examination of the first application of any insurance company doing business as prescribed in chapter I., title IV., part IV., division I., of the Civil Code, and issuing the license thereon, fifty dollars.

For filing each annual statement, as provided in the foregoing chapter, twenty-five dollars.

For each certificate of authority provided in said chapter, two dollars.

For license fee for assessment life insurance companies, as prescribed in § 4156 (710), of the Civil Code, one hundred dollars.

For filing annual statement, as prescribed in § 4157 (711) of the Civil Code, twenty-five dollars.

For making the certificate mentioned in § 4154 (708) of the Civil Code, in addition to the necessary expenses incurred, ten dollars.

For copy of every paper filed or record in his office, twenty cents per folio.

For certificate and seal, fifty cents.

For filing any papers not otherwise provided for, twenty-five cents.

3164. (§ 4631.) *Fees of clerk of supreme court.*—The fees of the clerk of the supreme court are specified in § 301 (872) of this code, and salary in § 304 (875) of this code.

3165. *Fees of notaries public.*—For drawing, copying and recording each and every protest for the non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, order, draft or check, One Dollar.

For drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft or check, Twenty-five Cents.

For drawing an affidavit, deposition, or other paper for which provision is not herein made, for each folio unless otherwise prescribed, Twenty Cents.

For taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first signature, One Dollar.

For each additional signature, Fifty Cents.

For administering an oath or affirmation, Twenty-five Cents.

For certifying an affidavit, with or without seal, including oath, Fifty Cents.

Provided, the maximum fee that can be computed or charged for drawing, copying and recording a protest and for drawing and serving the notices of non-payment or non-acceptance, shall be Two Dollars and Fifty Cents. [*Act approved February 26th, 1907, § 1.*] (*10th Sess. Chap. 44.*)

3166. (§ 4633.) *Fees of commissioner of deeds.*—The fees of commissioner of deeds are the same as those prescribed for a notary public.

3167. (§ 4634.) *Fees of sheriff.*—For service of summons and complaint on each defendant, besides mileage, one dollar.

For levying and serving each writ of attachment or execution on real or personal property, besides mileage, one dollar.

For service of attachment on the body or order of arrest on each defendant, besides mileage, one dollar.

For service of affidavit, order and undertaking in claim and delivery, besides mileage, one dollar.

For serving a subpoena for each witness summoned, besides mileage, thirty cents.

For serving a writ of possession or restitution, two dollars.

For trial of the right of property or damages, including all services except mileage, three dollars.

For taking bond or undertaking in any case authorized by law, one dollar.

For serving every notice, rule or order, besides mileage, on each person, one dollar.

For copy of any writ, process or other paper, when demanded or required by law, for each folio, twenty cents.

For advertising any property for sale on execution, or under any judgment or order of sale, exclusive of the costs of publication, one dollar.

For commissions, for receiving and paying over money on execution or other process, when lands or personal property have been levied on and sold, on the first one thousand dollars, two per cent.; on all sums between one thousand dollars and five thousand dollars, one per cent.; on all sums over five thousand dollars, one-half of one per cent.

For commissions, for receiving and paying over money on process without levy, or when lands or goods levied on are not sold, on the first five hundred dollars, one and one-half per cent., and

on sums between five hundred dollars and one thousand dollars, one per cent., and on all sums over one thousand dollars, one-half of one per cent.

For executing in duplicate a certificate of sale, exclusive of filing same, one dollar.

For drawing and executing sheriff's deed, including acknowledgment, three dollars.

For the expense in taking and keeping possession of and preserving property under attachment, execution, or other process, such sum as the court or judge may order, not to exceed the actual expenses incurred, and no keeper must receive to exceed three dollars per day, and no keeper must be employed without an order of court, nor must he be so employed unless the property is of such character as to need the personal attention and supervision of a keeper. No property must be placed in charge of a keeper if it can be safely and securely stored, or where there is no reasonable danger of loss..

For each mile actually traveled in serving every writ, process, order, notice or other paper, going and coming, fifteen cents.

But no mileage must be allowed on an attachment, order of arrest, order for the delivery of personal property, or any other order, notice or paper, when the same accompanies the summons, and the service thereof may be made at the time of the service of the summons, unless for the distance actually traveled beyond that required to serve the summons.

When two papers are served on the same person at the same time, but one mileage must be charged.

In the service of subpoenas, but one mileage must be charged when the persons named in the subpoena live in the same place or in the same direction, but mileage may be charged for the longest distance actually traveled.

Any writ or other paper for service must be received at any place in the county where the sheriff or a deputy is found, and mileage must be computed from such place. If papers are delivered for service away from the county seat, a copy or copies thereof must be furnished for service.

For actual expenses in conveying a person, when under arrest, before a magistrate or to jail, or on habeas corpus, which must be allowed by the board of county commissioners.

Jurgens v. Hauser, 19 Mont. 184; 47 Pac. 809. A sheriff is entitled to his commission on the purchase price of real estate sold by him under an order of

sale in a suit of foreclosure when the mortgagee buys the premises.
Wade v. L. & C. Co., 24 Mont. 339; 61 Pac. 880.

3168. (§ 4635.) *Fees of county clerk.*—For filing and recording each instrument of writing allowed by law to be recorded, except as hereinafter provided, for first folio, thirty cents.

For each subsequent folio or fraction thereof, fifteen cents.

For each entry in index, ten cents.

For certificate that such instrument has been filed and recorded, with seal affixed, fifty cents.

For searching any index, record of files of the office, for each year, when required, in abstracting or otherwise, fifteen cents.

For abstract of title, when required made from original records and files, for each conveyance, incumbrance, or other instrument affecting title, fifty cents.

For a copy of any record or paper, for each folio, fifteen cents.

For filing and recording each declaratory statement of location of quartz or placer mining claim, mill site claim or notice of appropriation of water, including indexes, two dollars.

For filing and indexing each chattel mortgage, writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar.

For issuing marriage license and recording certificate of marriage, on return, including indexing, all to be paid for at time of issuing license, two dollars.

For recording and platting each townsite or map, for each lot up to and including one hundred, twenty-five cents.

For each additional lot in excess of one hundred, five cents.

For recording the field notes of survey of any townsite, per folio, twenty cents.

For filing, recording and indexing each affidavit of annual labor on mining claim, for each claim named therein, one dollar.

For filing and indexing each certificate of incorporation, or annual statement of any corporation, one dollar.

For each entry of discharge or satisfaction of mortgage, lien or other instrument on the margin of the record thereof or upon the original instrument, and noting same in index, twenty-five cents.

For administering an oath, with certificate and seal, except in application for pensions or in pension certificates, for which no charge shall be made, fifty cents.

For taking and certifying an acknowledgment, with seal affixed, for each signature thereto, fifty cents.

For filing and indexing each affidavit for renewal of chattel mortgage, fifty cents.

For filing and indexing each affidavit of butcher, of brands of cattle slaughtered, fifty cents.

For recording and indexing transcripts in estray and lost property cases, one dollar.

For filing or recording, or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service. [*Act approved March 18, 1895.*]

3169. (§ 4636.) *Fees of clerk of district court.*—At the commencement of each action or proceeding the clerk must collect from the plaintiff the sum of five dollars.

And the defendant, on his appearance, must pay the sum of two dollars and fifty cents. (Which includes all the fees to be paid up to the entry of judgment.)

On the entry of judgment in favor of plaintiff he must pay the additional sum of two dollars and fifty cents.

And if in favor of defendant, the defendant must pay the sum of five dollars. (Which includes all the clerk's costs for all services rendered in any action or proceeding, except issuing execution or order of sale, and the fees for transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment.)

For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of five dollars. (Which includes all costs up to the entry of judgment.)

For entry of judgment in favor of party appealing, he must pay the sum of two dollars and fifty cents.

For entry of judgment in favor of the other party, or respondent, he must pay the sum of five dollars. (Which includes all the clerk's costs for all services rendered on such appeals.)

For certifying transcripts on appeal where the same are not prepared by him, five dollars.

And where he prepares such transcript in addition thereto, per folio, ten cents.

For preparing certified copies of papers in his office, per folio, ten cents.

For oath and jurat, with seal, fifty cents.

For administering oath, twenty-five cents.

For taking depositions, per folio, twenty cents.

For filing and docketing transcript of judgment and issuing execution thereon, two dollars and fifty cents.

For issuing execution and all services connected therewith, one dollar.

For issuing execution or order of sale on foreclosure of liens, one dollar.

And in addition, per folio, twenty cents.

For searching records of files for each year, except for suitors or their attorneys, twenty-five cents.

For transmission of records or files or transfer of cases to other courts, two dollars and fifty cents.

For filing and entering papers on transfer from other courts, five dollars.

For making, acknowledging and procuring the signature of judge to deed of lot in townsite, four dollars. [*Act approved March 7, 1895.*]

State v. Court, 24 Mont. 427; 62 Pac. 689. The clerk of a district court is not authorized to collect a transcript fee and a fee for making the transcript is not a necessary disbursement.

Shadville v. Barker, 26 Mont. 49; 66 Pac. 761. Transcripts on appeal must be certified by the clerk of the district court, under seal, after comparison with the original files, and no other method of authentication is lawful.

State v. Court, 26 Mont. 226; 68 Pac. 470. The clerk of a district court is not

entitled to a greater sum than five cents per folio for verbatim copies of testimony obtained from the stenographer and incorporated in a bill of exceptions.

District courts do not possess the power to disallow an item of costs for supplementary briefs used in the supreme court, or say that any portion of the transcript on appeal should have been omitted as unnecessary.

Montana Co. v. B. & M. Co., 33 Mont. 403; 84 Pac. 708.

3170. (§ 4637.) *Fees of clerk in probate proceedings.*—At the time of filing the petition for letters testamentary, of administration or guardianship, the clerk must collect from the petitioner the sum of five dollars.

On the return of the inventory, if the estate is appraised at a sum less than one thousand five hundred dollars, no additional fees are required. If the estate is appraised at one thousand five hundred dollars and not to exceed three thousand dollars, there must be paid an additional fee by the executor, administrator or guardian of five dollars, making in all ten dollars.

If for more than three thousand dollars and not to exceed ten thousand dollars, an additional fee of ten dollars, making in all fifteen dollars.

If for more than ten thousand dollars and not to exceed twenty thousand dollars, an additional fee of twenty dollars, making in all twenty-five dollars.

If for more than twenty thousand dollars and not to exceed thirty thousand dollars, an additional fee of thirty-five dollars, making in all forty dollars.

If for more than thirty thousand dollars and not to exceed fifty thousand dollars, an additional fee of forty-five dollars, making in all fifty dollars.

If for more than fifty thousand dollars and not to exceed one hundred thousand dollars, an additional fee of seventy dollars, making in all seventy-five dollars.

If for more than one hundred thousand dollars an additional fee of ninety-five dollars, making in all one hundred dollars.

For admitting a will to probate and all services connected therewith, in addition to the above, there must be paid to the clerk the sum of five dollars.

If a will is contested, the contestant must pay to the clerk, on filing his grounds of opposition, the sum of five dollars.

And on the entry of judgment thereon the prevailing party must pay the sum of two dollars and fifty cents.

On filing a petition to determine heirship or title to an estate, the petitioner must pay to the clerk the sum of five dollars.

On entry of judgment thereon the prevailing party must pay the sum of two dollars and fifty cents.

3171. *Fees of county treasurer for tax deed.*—The County Treasurer shall receive for making and acknowledging a deed for property sold for delinquent taxes, the sum of three dollars. [*Act approved February 22nd, 1899, § 1.*] (6th Sess. 49.)

3172. (§ 4639.) *Fees of county surveyor.*—The county surveyor is entitled to receive and collect for his own use the following fees:

For services in making a survey required by any court, or upon the application of any person, the sum of seven dollars per day, to be paid by the person making the application, and if made for the county by order of the board of county commissioners, to be paid out of the contingent fund.

For copies and certificates, per folio, twenty cents.

For copy of any plat of survey, two dollars.

Expenses of chainman and markers, if furnished by surveyor, not to exceed per day, three dollars (or as agreed upon).

Wight v. Meagher Co., 16 Mont. 483; 41 Pac. 273. A county surveyor is not entitled to an allowance from the county for hire and board of team and reasonable expenses in making a survey for the county. State v. Granite Co., 23 Mont. 253; 58 Pac. 440.

3173. (§ 4640.) *Fees of coroner.*—The coroner is entitled to receive and collect for his own use the following fees:

For each day engaged in holding an inquest, five dollars.

For subpoenaing each witness, including copy of subpoena, thirty cents.

For summoning each juror, including copy of summons, thirty cents.

For each oath administered, five cents.

For making transcript of testimony, per folio, fifteen cents.

For each mile actually traveled in the performance of any duty, ten cents.

For filing papers, each, five cents.

A justice of the peace, acting as coroner, is allowed the same fees as the coroner, and no more.

If acting as sheriff, the coroner is allowed the same fees as sheriff or constable for like services. [*Act approved March 14, 1895.*]

3174. (§ 4641.) *Fees of public administrator.*—The public administrator is allowed to receive and collect for his own use, for services rendered, the same fees as are allowed executors and administrators, as provided in § 7633 (2776) of the Code of Civil Procedure.

3175. *Fees of justices of the peace.*—Except as provided in Section 7176 (1873) of the Code of Civil Procedure of the State of Montana, it is hereby made the duty of a justice of the peace in every civil action instituted in his court to require the payment in advance of the following fees or costs, to-wit: The fee of two dollars and fifty cents when the summons is issued, the fee of

two dollars and fifty cents when issue is joined, and the fee of two dollars and fifty cents of the prevailing party, when judgment is rendered, as provided in Section 3176 (4642) of the Political Code, and it shall be unlawful for such justice of the peace to include or tax any such fees or costs in any judgment taken before or rendered by him or in his court, unless such fees or costs have been paid in advance as above provided, and in case such justice of the peace shall include or tax any such fees or costs in any such judgment when they have not been paid, as above provided, in advance, he shall forfeit to the person against whom the judgment is rendered, and be liable to such persons on his official bond for ten times the amount of such fees or costs included in such judgment without having been paid in advance as aforesaid, to be recovered in a civil action. [*Act approved March 3rd, 1903, § 1.*] (8th Sess. Chap. 52.)

3176. (§ 4642.) *Fees of justices of the peace generally.*—For all services in an action in which there is no appearance by the defendant, and judgment is rendered by default, including issuing of execution and return, to be paid by plaintiff, two dollars and fifty cents.

For all services in an action where judgment is rendered by confession, two dollars and fifty cents.

For all services in an action where issue is joined and a trial is had, including the entry of judgment, issuance, and return of execution and satisfaction, seven dollars and fifty cents. (Five dollars to be paid by the plaintiff, and two dollars and fifty cents by the party in whose favor the judgment is rendered. The justice may demand of the plaintiff the payment of two dollars and fifty cents in advance when the summons is issued, and two dollars and fifty cents of plaintiff when issue is joined, and two dollars and fifty cents of the prevailing party when judgment is rendered, which includes all the fees to which the justice is entitled up to the notice of appeal.)

For filing notice of appeal, filing, justifying and approving undertaking on appeal, and transmitting the papers to the district court with certificate, two dollars and fifty cents.

FEES IN CRIMINAL ACTIONS.

For all services rendered as a committing magistrate where examination is waived, two dollars and fifty cents.

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, five dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, two dollars and fifty cents.

For all services rendered where there is a plea of guilty, two dollars and fifty cents.

For all services rendered where there is a trial, five dollars.

For taking, filing and approving bail bond, including justification, one dollar.

For transmitting papers on appeal, and certificate including bond and approval, one dollar and fifty cents.

For all services in issuing a search warrant, to be paid by the person demanding same, one dollar.

The total amount of fees allowed by the board of county commissioners in criminal cases must not exceed five hundred dollars in any one year.

MISCELLANEOUS FEES.

For copies of papers on file or docket, per folio, twenty cents.

For taking the acknowledgment of an instrument, for the first name, one dollar.

For each additional name, fifty cents.

For administering oath and jurat, fifty cents.

For all services relating to lost or unclaimed property as prescribed in chapter VIII., title VII., part III., of this code, two dollars.

For performing the marriage ceremony and returning certificate to county clerk, five dollars.

3177. (§ 4643.) *Fees of constable.*—For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent.; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale, exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding or executing a search warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant, when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs, in civil actions.

When two or more persons are brought before a magistrate or to jail, at the same time or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expenses incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars in any one year. The excess must be paid into the contingent fund of the county treasury.

Wade v. L. & C. Co., 24 Mont. 339; 61 Pac. 880.

3178. *Jurors' fees.*—Grand and trial jurors receive three dollars per day for attendance before any court of record and ten cents per mile each way for travelling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage. [Act approved March 3rd, 1903, § 1.] (8th Sess. Chap. 48.)

Wade v. L. & C. Co., 24 Mont. 338; 61 Pac. 880.

3179. (§ 4645.) *Duties of clerk as to jurors.*—The clerk must give to each juror at the time he is excused from further service a certificate taken from a book containing a stub with a like designation, signed by himself under seal, in which must be stated the name of the juror, the number of days' attendance, the number of miles traveled and the amount due, and on presentation of such

certificate to the county treasurer the amount specified in the certificate must be paid out of the general fund, and the clerk must make a detailed statement containing a list of the jurors, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid the clerk until such statement is filed. The board must examine such statement and see that it is correct. The clerk must keep a record of the attendance of jurors and compute the amount due for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

3180. *What constitutes attendance of trial juror.*—A juror must be paid for each day's attendance for the term or session for which he was summoned until excused. He must not receive any compensation for Sundays or legal holidays and a juror who resides within two miles from the court house, must not receive any compensation for any day when the court is not actually in session, or if in session, is engaged in the trial of a case in which the juror is not impanelled, or is engaged in other business, and the juror has been temporarily excused from attendance on court. [Act approved March 3, 1903, § 2.] (8th Sess. 48.)

3181. (§ 4647.) *Jurors in courts not of record, what pay to receive, and no pay from county.*—Jurors in courts not of record, in both civil and criminal actions, shall receive one dollar and fifty cents per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Juror's in coroner's inquest shall receive for their services the sum of one dollar and fifty cents per day. [Act approved March 7, 1895.)

Wade v. L. & C. Co., 24 Mont. 339; 61 Pac. 880.

3182. (§ 4648.) *Witnesses' fees.*—For attending in any civil or criminal action or proceeding before any court of record, referee or officer authorized to take depositions or commissioners to assess damages or otherwise; *Provided*, That no officer of the United States, the state of Montana, or of any county, incorporated city or town within the state of Montana, shall receive any per diem when testifying in a criminal proceeding; *and provided further*, That no witness shall receive fees in any more than one criminal case on the same day: For each day, three dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, ten cents. [Act approved March 2, 1895.]

Wade v. L. & C. Co., 24 Mont. 339;
61 Pac. 880.

McGlaufflin v. Wormser, 28 Mont. 182;
72 Pac. 429. A party to whom costs

are awarded is entitled to mileage for witnesses who appeared and testified, although the record does not show that they were subpoenaed.

3183. (§ 4649.) *Duties of clerk in reference to jurors' certificate.*—The witnesses in criminal actions must report their

presence to the clerk the first day they attend under the subpoena, and at the time any witness is excused from further attendance the clerk must give to each witness a certificate taken from a book, containing a stub with like designations signed by the clerk, under seal, in which must be stated the name of the witness, the number of days in attendance, the number of miles traveled, and the amount due, and on presentation of such certificate to the county treasurer, the amount specified in the certificate must be paid out of the general fund.

3184. (§ 4650.) *Statement of clerk to be sent to board of county commissioners.*—And the clerk must make a detailed statement containing a list of the witnesses, the amount of fees and mileage earned by each, and file the same with the clerk of the board of county commissioners on the first day of every regular meeting of the board, and no quarterly salary must be paid to the clerk until such statement is filed. The board must examine the statement and see that it is correct.

3185. (§ 4651.) *Clerk must keep a record of witnesses in criminal actions.*—The clerk must keep a record of the attendance of witnesses in criminal cases, and compute the amount due them for mileage, and the distance from any point to the county seat must be determined by the shortest traveled route.

3186. *Witnesses in courts not of record.*—Witnesses in courts not of record in civil actions and proceedings shall receive one dollar and fifty cents for each day's actual attendance and ten cents for each mile actually travelled in going from his residence by the usual travelled route to the said court and return. [Act approved March 3, 1903, § 3.] (8th Sess. Chap. 48.)

3187. *Witnesses in criminal actions or coroner's inquests.*—Witnesses in courts not of record in criminal actions and on coroner's inquests shall receive one dollar and fifty cents per day for actual attendance and ten cents per mile for each mile actually and necessarily travelled from his place of residence to the said court and return. [Act approved March 3, 1903, § 4.] (8th Sess. Chap. 48.)

3188. (§ 4654.) *In civil actions must be paid by party subpoenaing.*—The fees and compensation of a witness in all civil actions must be paid by the party who caused him to be subpoenaed.

3189. (§ 4655.) *Witness must be paid in advance in civil actions.*—No witness is obliged to attend court when subpoenaed unless his mileage and fees for one day's attendance are tendered or paid to him on his demanding the same, nor unless his fees for attendance thereafter for each day are tendered or paid to him on demand. The fees of witnesses paid may be taxed as costs against the losing party.

3190. (§ 4656.) *In criminal actions not more than six to be subpoenaed without order of court.*—In criminal actions in a court of record the clerk of the court must not issue a subpoena on behalf of the state or defendant for more than six witnesses, except upon the order of the court or judge, and such order may be made upon proper showing by affidavit or otherwise.

State v. O'Brien, 18 Mont. 2; 43 Pac. 1091. It is proper for the district court to require defendant, who requests a subpoenae for additional witnesses, to disclose to the judge, and not counsel for the state, the substance and materiality of their testimony.

3191. (§ 4657.) *Interpreters to be paid as witnesses.*—Interpreters and translators must receive the same fees as witnesses.

3192. (§ 4658.) *Expert witnesses.*—An expert is a witness and receives the same compensation as a witness.

3193. (§ 4659.) *Judges and clerks of election, fees.*—The judges and clerks of election shall receive three dollars per day. For fees of registry agents, see § 488 (1219).

3194. (§ 4660.) *County commissioners' fees.*—Members of the board of county commissioners each receive eight dollars per day and fifteen cents per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence.

Wade v. L. & C. Co., 24 Mont. 338; 61 Pac. 880.

3195. *County superintendent's traveling expenses.*—In addition to the salary now provided by law each county superintendent of schools shall be paid his necessary traveling expenses incurred in the discharge of his duties, not to exceed Three Hundred Dollars (\$300.00) in any one year. [Act approved February 21, 1907, § 1.] (10th Sess. Chap. 27.)

3196. *County commissioners to audit claims.*—The Boards of County Commissioners of the several counties of the state are hereby authorized and directed to audit and allow such traveling expenses of the superintendent of schools of the respective counties, quarterly, and the same shall be paid out of the general fund of such county. [Act approved February 21, 1907, § 2.] (10th Sess. Chap. 27.)

3197. (§ 4661.) *Limitation of chapter.*—The salary or emoluments of any officer appointed or elected prior to the time of the adoption of this code are not affected by the provisions of this chapter.

CHAPTER V.

OTHER COUNTY CHARGES.

Section 3198. *County charges to be audited.*

“ 3199. *Enumeration of county charges.*

“ 3200. *Costs on removal of criminal actions.*

“ 3201. *Proceedings in collection of such costs.*

3198. (§ 4680.) *County charges to be audited.*—Accounts for county charges of every description must be presented to the board of county commissioners to be audited, as prescribed in article III., chapter II., title II., part IV., of this code.

3199. (§ 4681.) *Enumeration of county charges.*—The following are county charges.

1. Charges incurred against the county by virtue of any provision of this title.

2. One-half of the salary of the county attorney, and all expenses necessarily incurred by him in criminal cases arising within the county.

3. The salary and actual expenses for traveling when on official duty and for the board of prisoners allowed by law to sheriffs, and the compensation allowed by law to constables for executing process on persons charged with criminal offenses.

4. The sums required by law to be paid to grand and trial jurors and witnesses in criminal cases.

5. The accounts of the coroner of the county for such services as are provided by law.

6. All charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law.

7. The necessary expenses incurred in the support of county hospitals and poor farms, and the indigent sick and the otherwise dependent poor whose support is chargeable to the county.

8. The contingent expenses necessarily incurred for the use and benefit of the county.

9. Every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners, or declared to be a county charge.

Sears v. Gallatin Co., 20 Mont. 464; 52 Pac. 204.

Wade v. L. & C. Co., 24 Mont. 338; 61 Pac. 880. Expenses, not imposed by law, are not a charge against a county.

Ind. P. Co. v. L. & C. Co., 30 Mont. 85; 75 Pac. 861. All expenses necessarily incurred by a county attorney in prosecutions for public offenses arising in the county are a county charge.

3200. (§ 4682.) *Costs on removal of criminal actions.*—When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found on information filed.

State v. L. & C. Co., 34 Mont. 355; 86 Pac. 420. Where a criminal action is removed from one county to another for trial, it is the duty of the county to which it is transferred to furnish a prosecuting officer; if its county attorney

cannot act and the court appoints special counsel to represent the state, the cost thereof is not a proper charge against the county from which the change of venue was had.

3201. (§ 4683.) *Proceedings in collection of such costs.*—The district court of the county to which such action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of their county, and such board of county commissioners shall audit the same and

draw their warrants therefor upon the treasurer of the county from which such action was removed, and such board of county commissioners shall forward to said treasurer and board of county commissioners of the county from which said action was transferred as aforesaid, a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court; and the board of county commissioners receiving such certified copy of said costs allowed, shall enter the same in their books as a charge against the treasurer of their county, and the county treasurer of the county from which such action was removed must immediately upon presentation pay said warrant out of the general fund of said county; or if at the time of presentation there is not sufficient moneys in the said general fund to pay the same, he must indorse upon said warrant, "Not paid for want of funds," and said warrant must be registered, and shall draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of county commissioners of the county where the indictment was found, or information filed.

State v. L. & C. Co., 34 Mont. 355; 86 Pac. 420. The certification of the costs resulting from the removal of an action for trial from one county to another, required by this section, does not

have the effect of a judgment against the county from which the action was transferred, where no action was pending to which it was a party.

TITLE III.

CITIES AND TOWNS.

- CHAPTER
- I. CITIES AND TOWNS AS BODIES CORPORATE.
 - II. CLASSIFICATION OF CITIES AND TOWNS.
 - III. ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS.
 - IV. THE PROCEEDINGS FOR CHANGING CITIES OR TOWNS FROM ONE CLASS TO ANOTHER.
 - V. INDEBTEDNESS OF CITIES OR TOWNS. BONDS.
 - VI. PLATS OF CITIES, TOWNS AND ADDITIONS THERETO.
 - VII. MISCELLANEOUS PROVISIONS.
 - VIII. CITIES AND TOWNSITES ON THE PUBLIC LANDS OF THE UNITED STATES.

CHAPTER I.

CITIES AND TOWNS AS BODIES CORPORATE.

- Section 3202. *General powers.*
- " 3203. *Distribution of powers of cities.*
- " 3204. *Distribution of powers of towns.*
- " 3205. *City and town, how named and general corporate powers.*

3202. (§ 4700.) *General powers.*—A city or town is a body politic and corporate, with the general powers of a corporation, and the powers specified or necessarily implied in this title, or in special laws heretofore enacted.

Snook v. Anaconda, 26 Mont. 66 Pac. 757. It is the duty of a city organized under the laws of this state to establish and improve streets, and damages can be recovered by one who is injured by its negligence in permitting its streets to become and remain in a dangerous condition.

Helena v. Kent, 32 Mont. 285; 80 Pac. 259. Sections 4700 and 4703 of this code constitute a general grant of power, as well as a limitation of power, for a city, organized under the laws of this state, to pass all ordinances necessary for its government and management.

3203. (§ 4701.) *Distribution of powers of cities.*—Every city has legislative, executive, and judicial power. Its legislative power is vested in a city council, its executive power in a mayor and his subordinate officers, and its judicial power in a police court.

3204. (§ 4702.) *Distribution of powers of towns.*—Every town has legislative, executive and judicial power. Its legislative power is vested in a town council, its executive power in a mayor and his subordinate officers, and its judicial power in justices of the peace of the township in which the town is situated.

3205. (§ 4703.) *City and town, how named and general corporate powers.*—Every city or town organized under this title is entitled “the city of——(naming it), or the town of——(naming it),” and by such name has perpetual succession; may sue and be sued in all courts and places, and in all proceedings whatever, and may have and use a common seal, may purchase, receive, have, take, hold, lease, use, and enjoy property of every name or description, and dispose of the same for the common benefit, and has such other powers as are incident to municipal corporations not inconsistent with the laws of the United States or the state.

State v. Philipsburg, 23 Mont. 22; 57 Pac. 407. Mandamus will lie to compel a city to audit and pay a bill which it owes to a water company for the rent of hydrants, although this section provides

that cities may sue or be sued.

State v. Mayor, 30 Mont. 344; 76 Pac. 760.

Helena v. Kent. 32 Mont. 284; 80 Pac. 259.

CHAPTER II.

CLASSIFICATION OF CITIES AND TOWNS.

Section 3206. Cities and towns classified.

“ 3207. *Basis of classification.*

3206. (§ 4710.) *Cities and towns classified.*—Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class, and every municipal cor-

poration having a population of three hundred and less than one thousand is a town. [*Act approved March 13, 1895.*]

3207. (§ 4711.) *Basis of classification.*—The census taken under the direction of the congress of the United States in the year eighteen hundred and ninety, and every ten years thereafter, shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

CHAPTER III.

ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS.

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| ARTICLE | I. | PROCEEDINGS FOR THE ORGANIZATION OF A CITY OR TOWN AND ADDING CONTIGUOUS TERRITORY. |
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ARTICLE I.

PROCEEDINGS FOR THE ORGANIZATION OF A CITY OR TOWN AND ADDING CONTIGUOUS TERRITORY.

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| Section | 3208. | <i>Steps to be taken to incorporate.</i> |
| " | 3209. | <i>Election, how conducted.</i> |
| " | 3210. | <i>First election for officers.</i> |
| " | 3211. | <i>Officers elected and conduct of election.</i> |
| " | 3212. | <i>Additions to cities or towns.</i> |
| " | 3213. | <i>Additions, how made.</i> |
| " | 3214. | <i>Extension of corporate limits over contiguous platted tract.</i> |
| " | 3215. | <i>Election on the question of annexation.</i> |

3208. (§ 4720.) *Steps to be taken to incorporate.*—Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than one hundred qualified electors, residents of the state and residing within the limits of the proposed incor-

poration, to the board of county commissioners of the county in which the territory is situated, which petition must describe the limits of the proposed city or town, and of the several wards thereof, which must not exceed one square mile for each five hundred inhabitants residents therein. The petitioners must annex to the petition a map of the proposed territory to be incorporated, and state the name of the city or town. The petition and map must be filed in the office of the county clerk. Upon filing the petition the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same, must return the list to the board of county commissioners, and the same must be filed by them in the county clerk's office. No municipal corporation must be formed unless the number of inhabitants is three hundred or upwards.

3209. (§ 4721.) *Election, how conducted.*—After filing the petition and census, if there be the requisite number of inhabitants for the formation of a municipal corporation, as required in the preceding section, the county commissioners must call an election of all the qualified electors residing in the territory described in the petition. Said election must be held at a convenient place within the territory described in the petition, to be designated by the board, notice of which election must be given by publication in some newspaper published within the limits of the territory to be incorporated, or if none be published therein, by posting notice in three public places within said limits. The notice must be published thirty days prior to the election, and must specify the time and place when and where the same is held, and contain a description of the boundaries of the city or town. The board must appoint judges and clerks of election, who must qualify as required by law, and after the election they must report the result to the board, together with the ballots cast at said election. The ballots used at the election must be "For incorporation" or "Against incorporation," and all elections must be conducted as provided in title II., part III., of this code.

3210. (§ 4722.) *First election for officers.*—When the incorporation of a city or town is completed, the board of county commissioners must give notice for thirty days in a newspaper published within the limits of the city or town, or if none be published therein, by posting notices in six public places within the limits of the corporation, of the time and place or places of holding the first election for offices of the corporation. At such election all the electors qualified by the general election laws of the state, and who have resided within the limits of the city or town for six months, and within the limits of the ward for

thirty days preceding the election, are qualified electors and may choose officers for the city or town, to hold office as prescribed in the next succeeding section.

Dowty v. Pittwood, 23 Mont. 118; 57 Pac. 728. The phrases "preceding the election" and "next preceding the election" are used as equivalent in meaning.

3211. (§ 4723.) *Officers elected and conduct of election.*—At such election there must be elected, in a city of the first class, a mayor, a police judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided; in a city of the second class, a mayor, a police judge, a city treasurer, a city marshal, and two aldermen from each ward; in a town, a mayor, and two aldermen from each ward, who hold office until the first Monday of May after the first annual election, and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers. The board of county commissioners must appoint judges and clerks of election, and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

3212. (§ 4724.) *Additions to cities or towns.*—Whenever territory adjoining any incorporated city or town is surveyed, and laid off into streets or blocks as an addition thereto, upon filing the map or plat thereof in the office of the county clerk, said territory may become a part of such city or town, upon the approval of the mayor and a majority of the council indorsed thereon.

Farlin v. Hill, 27 Mont. 33; 69 Pac. 239. The owner of a tract of land within the exterior boundaries, but not a part of a city, and not entitled to the privileges of an owner of city lots, is under no obligation to pay special assessments for a sewer constructed by the city in the streets in front of such land.

3213. (§ 4725.) *Additions, how made.*—The council has control of all such additions, and power by ordinance to compel the owners of these additions to lay out streets, avenues and alleys, so as to have the same correspond in width and direction, and be continuations of the streets, avenues and alleys in the city or town, or in the additions thereto, contiguous to or near the proposed addition. The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with, and the plat thereof has been submitted to, and approved by, the mayor and council, and such approval indorsed thereon.

3214. *Extension of corporate limits over contiguous platted tracts.*—That any tracts or parcels of land, which have been or may hereafter be, platted into lots or blocks, streets and alleys, and the map or plat thereof filed in the office of the County Clerk and Recorder of the County in which the same is situated, and shall be contiguous to any incorporated city or town, may be embraced within the corporate limits thereof, and the boundaries

of such city or town extended so as to include the same in the following manner: When in the judgment of any city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town, and the inhabitants thereof, and of the inhabitants of any contiguous platted tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith cause to be published in the newspaper, published nearest such platted tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval in writing, of the proposed extensions of the boundaries of such city or town, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council, after the expiration of said twenty days, lay before the same, all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be extended so as to embrace and include such platted tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; *provided*, that such resolution shall not be adopted by such council if disapproved by a majority of the resident freeholders of the territory proposed to be embraced. [*Act approved February 21st, 1905, § 1.*] (*9th Sess. Chap. 30.*)

3215. (§ 4727.) *Election on the question of annexation.*—When a city or town desires to be annexed to another and contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities respectively the terms and conditions on which the annexation can be made, and if the city or town council of the municipal corporation to be annexed approve of the terms thereof, it must by ordinance so declare, and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare, and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated, and when so filed the annexation is complete, and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation. Such annexations do not affect or impair any rights, obligations or liabilities, then existing for or against either of such cities or towns.

ARTICLE II.

OFFICERS AND ELECTIONS.

- Section 3216. Officers of city of the first class.*
 “ 3217. *Officers of city of second and third classes.*
 “ 3218. *Officers of towns.*
 “ 3219. *Trustees of public library.*
 “ 3220. *Council has power to abolish office.*
 “ 3221. *Power to consolidate offices.*
 “ 3222. *City or town to be divided in wards.*
 “ 3223. *How divided and change of boundaries.*
 “ 3224. *Annual election of cities and towns and terms of office.*
 “ 3225. *Qualification of mayor.*
 “ 3226. *Terms of aldermen, how decided.*
 “ 3227. *Terms, when to begin.*
 “ 3228. *Who eligible.*
 “ 3229. *Qualifications of aldermen.*
 “ 3230. *Registration of electors.*
 “ 3231. *Qualifications of electors.*
 “ 3232. *Judges and clerks of election; voting places; election precincts.*
 “ 3233. *Canvass, when and how made.*
 “ 3234. *Oath and bonds, vacancy.*
 “ 3235. *When duties of office begin.*
 “ 3236. *Vacancies, how filled.*
 “ 3237. *Accountability of officers provided for.*
 “ 3238. *Official bonds, how given.*
 “ 3239. *Salaries must be fixed.*
 “ 3240. *Salaries of mayor and aldermen.*
 “ 3241. *Salaries of police judge.*
 “ 3242. *Compensation of justices of the peace acting as police judge.*
 “ 3243. *Salary of treasurer.*
 “ 3244. *Salary of city attorney.*
 “ 3245. *Salary of chief of police.*
 “ 3246. *Salary of clerk.*
 “ 3247. *Salary must not be increased or diminished during term.*
 “ 3248. *Constitutional oath of office must be taken.*

3216. (§ 4740.) *Officers of city of the first class.*—The officers of a city of the first class consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city attorney, one city clerk, one chief of police,

one assessor, one street commissioner, one city jailer, one city surveyor, and whenever a paid fire department is established in such city, a chief engineer and one or more assistant engineers, and any other officers necessary to carry out the provisions of this title. The city council may by ordinance, prescribe the duties of all city officers and fix their compensation, subject to the limitations contained in this title. [*Act approved March 13, 1895.*]

Philipsburg v. Degenhart, 30 Mont. 304; 76 Pac. 695.

3217. (§ 4741.) *Officers of city of second and third classes.*—The officers of a city of the second and third classes consist of one mayor, two aldermen from each ward, one police judge, one city treasurer, who may be ex-officio tax collector, who must be elected by the qualified electors of the city as hereinafter provided. There may also be appointed by the mayor, with the advice and consent of the council, one city clerk, who is ex-officio city assessor, one chief of police, one city attorney, and any other officer necessary to carry out the provisions of this title. The city council may prescribe the duties of all city officers, and fix their compensation, subject to the limitations contained in this title. [*Act approved March 13, 1895.*]

3218. (§ 4742.) *Officers of towns.*—The officers of a town consist of one mayor, and two aldermen from each ward, who must be elected by the qualified electors of the town as hereinafter provided. There may be appointed by the mayor, with the advice and consent of the council, one clerk, who may be ex-officio assessor and a member of the council, and one treasurer, who may be ex-officio tax collector, and one marshal, who may be ex-officio street commissioner, and any other officers necessary to carry out the provisions of this title. The town council may prescribe the duties of all town officers, and fix their compensation, subject to the limitations contained in this title.

3219. (§ 4743.) *Trustees of public library.*—The trustees of any public library created and existing in a city or town must be appointed by the mayor with the advice and consent of the council. The number of such trustees and their duties must be prescribed by ordinance.

3220. (§ 4744.) *Council has power to abolish office.*—The city or town council has the power to abolish any office, the appointment to which is made by the mayor, with the advice and consent of the council, and discharge any officer so appointed, by a majority vote of the council, but no office created under this title must be abolished by the council.

3221. (§ 4745.) *Power to consolidate offices.*—The city or town council may, by ordinance, consolidate any of the offices, the appointment to which is made by the mayor, with the advice

and consent of the council, and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

3222. (§ 4746.) *City or town to be divided into wards.*—The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

3223. (§ 4747.) *How divided and change of boundaries.*—Cities of the first class must be divided into not less than four nor more than eight wards; cities of the second class into not less than three nor more than six, and cities of the third class into not less than two nor more than four wards, and towns into not less than two nor more than three wards. All changes in the number and boundaries of wards must be made by ordinance, and no new ward must be created unless there shall be within its boundaries one hundred and fifty electors, or more. [Act approved March 13, 1895.]

3224. (§ 4748.) *Annual election of cities and towns and terms of office.*—On the first Monday of April of each year a municipal election must be held, at which the qualified electors of each town or city must elect a mayor, and one alderman from each ward, to be voted for by the wards they respectively represent; the mayor to hold office for two years and until the qualification of his successor; and each alderman so elected to hold office for a term of two years and until the qualification of his successor, and also in cities of the first, second and third class, a police judge and a city treasurer, who hold office for a term of two years, and until the qualification of their successors. [Act approved March 13, 1895.]

3225. (§ 4749.) *Qualification of mayor.*—No person shall be eligible to the office of mayor unless he shall be at least twenty-five years old and a tax-paying freeholder within the limits of the city and a resident of the state for at least three years, and a resident of the city for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office. [Act approved March 7, 1895.]

Mayer v. Sweeney, 22 Mont. 104; 55 Pac. 913. A person, who, at the time of his election as mayor of a city, owned and paid taxes on personal property, and owned real property on which he

was not liable for taxes for that year because acquired since the date of assessment, is a "taxpaying freeholder" and eligible.

3226. (§ 4750.) *Terms of aldermen, how decided.*—At the first annual election held after the organization of a city or town under this title, the electors of such city or town must elect two aldermen from each ward, who must, at the first meeting of

the council, decide by lot their terms of office, one from each ward to hold for a term of two years, and one for the term of one year, and until the qualification of their successors.

3227. (§ 4751.) *Terms, when to begin.*—The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

3228. (§ 4752.) *Who eligible.*—No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

Dowty v. Pittwood, 23 Mont. 116; 57 Pac. 727.

3229. (§ 4753.) *Qualification of aldermen.*—No person shall be eligible to the office of alderman unless he shall be a tax-paying freeholder within the limits of a city and a resident of the ward so electing him, for at least one year preceding such election. [*Act approved March 7, 1895.*]

Dowty v. Pittwood, 23 Mont. 114; 57 Pac. 727. This section was a valid amendment of an existing law and became a part of the code on July 1, 1895.

3230. (§ 4754.) *Registration of electors.*—The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors and must not change the qualification of electors except as in this title provided.

3231. (§ 4755.) *Qualification of electors.*—All qualified electors of the state who have resided in the city or town for six months and in the ward for thirty days next preceding the election are entitled to vote at any municipal election.

Dowty v. Pittwood, 23 Mont. 118; 57 Pac. 728.

3232. *Judges and clerks of election; voting places; election precincts.*—The council must appoint judges and clerks of election and places of voting. There must be at least one place of voting in each ward, and there may be as many more as the council by ordinance shall fix, and the elector must vote in the ward in which he resides. The election precincts in a city or town must correspond with wards, but a ward may be subdivided into several voting precincts, and when so divided the elector shall vote in the precinct in which he resides, and all elections must be conducted according to the general laws of the state. [*Act approved March 9, 1907, § 1.*] (*10th Sess. Chap. 187.*)

3233. (§ 4757.) *Canvass, when and how made.*—On the Monday following any election the council must convene and publicly canvass the result, and issue certificates of election to each person elected by a plurality of votes. When two or more persons have received an equal and highest number of votes for

any one of the offices voted for, the council must thereafter, at its first regular meeting, decide by vote between the parties which is elected. If the council from any cause fails to meet on the day named the mayor must call a special meeting of the council within five days thereafter, and, in addition to the notice provided for calling special meetings, must publish the same on two successive days in some newspaper published in such city or town. If the mayor fails to call said meeting within said five days any three councilmen may call it. At such special meeting all elections, appointments, or other business may be transacted that could have been on the day first herein named.

3234. (§ 4758.) *Oath and bonds, vacancy.*—Each officer of a city or town must take the oath of office, and such as may be required to give bonds, file the same, duly approved, within ten days after receiving notice of his election or appointment; or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed; but if any one, either elected or appointed to office, fails for ten days to qualify as required by law, or enter upon his duties at the time fixed by law, then such office becomes vacant; or if any officer absents himself from the city or town continuously for ten days without the consent of the council, or openly neglects or refuses to discharge his duties, such office may be by the council declared vacant; or if any officer removes from the city or town, or any alderman from his ward, such office must be by the council declared vacant.

3235. (§ 4759.) *When duties of office begin.*—The officers elected enter upon their duties the first Monday of May succeeding their election, and officers, appointed by the mayor, with the advice and consent of the council, within ten days after receiving notice of their appointment.

3236. *Vacancies, how filled.*—When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term, and until the qualification of the successor. A vacancy in the office of Alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election the qualified electors of such city or ward may nominate and elect a successor to such office. The council, upon written charges, to be entered upon their journal, after notice to the party and after trial by the council, by vote of two-thirds of all the members elect, may remove any officer. [*Act approved March 5th, 1903, § 1.*] (8th Sess. Chap. 72.)

3237. (§ 4761.) *Accountability of officers provided for.*—It is the duty of the council to provide for the accountability of all officers provided for in this title, by requiring from them sufficient security for the faithful performance of their duties or trust,

which security must be given by them before entering upon their respective duties. If such security becomes insufficient, additional security may be required, and if not given within ten days, the council, by a vote of two-thirds of the members, may declare the office vacant, and may thereafter fill the same.

Philipsburg v. Degenhart, 30 Mont. not prescribe what the conditions of the 302; 76 Pac. 695. This section does bound of a city treasurer shall be.

3238. (§ 4762.) *Official bonds, how given.*—The city treasurer, city clerk and city marshal, and such other city officers as the council by ordinance may require, must give official bonds, in such sums and securities as the ordinance may prescribe, which bonds must be approved by the council and filed with the city clerk, except the bond of the city clerk, which must be filed with the city treasurer, and no officer must become surety upon the official bond of another.

Philipsburg v. Degenhart, 30 Mont. 303; 76 Pac. 695.

3239. (§ 4763.) *Salaries must be fixed.*—The council must, by ordinance, fix the salaries and compensation of the city officers, policemen, and other employes, which must not exceed the amount specified in this title.

3240. (§ 4764.) *Salaries of mayor and aldermen.*—The annual salary of the mayor of a city of the first class must not exceed two thousand dollars; and the annual salary of the mayor of a city of the second class must not exceed one thousand dollars; and the annual salary of the mayor of a city of the third class must not exceed two hundred dollars; and each alderman in a city of the first class may be allowed and paid not exceeding five dollars per diem, to be fixed by ordinance, for each day of session held by the city council; *Provided*, That no alderman shall be paid for more than five days' service during any one month; and aldermen of cities of the second and third class may be allowed and paid not exceeding three dollars per diem for each day of session, to be fixed by ordinance, but no alderman shall be paid for more than two days' service during any one month. No salary or compensation shall be allowed to the mayor or alderman of a town. No person shall be elected to the office of mayor or alderman in any city who is not a resident and freeholder within the limits of the city. [Act approved March 13, 1895.]

3241. (§ 4765.) *Salary of police judge.*—The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class must not exceed, for all services rendered, two thousand dollars; in a city of the second class must not exceed one thousand dollars, and in a city of the third class must not exceed four hundred dollars, and, in addition, a police judge is entitled to receive in all civil cases the fees which are now, or may hereafter be, allowed justices of the peace. In

all criminal actions or proceedings arising under the criminal laws of the state when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever. [*Act approved March 13, 1895.*]

3242. (§ 4766.) *Compensation of justices of the peace acting as police judge.*—In towns the council may designate a justice of the peace of the township in which the town is situated to act as police judge, and may by ordinance fix his compensation for his services, not exceeding one hundred dollars per annum, and the justices of the peace so designated must act as a police judge in all cases arising out of a violation of ordinances where the town is a party.

3243. (§ 4767.) *Salary of treasurer.*—The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed three thousand dollars, in cities of the second class must not exceed two thousand dollars, and in cities of the third class it must not exceed seven hundred dollars, and in towns it must not exceed five hundred dollars. [*Act approved March 13, 1895.*]

3244. (§ 4768.) *Salary of city attorney.*—The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class, three thousand dollars; and in cities of the second class must not exceed fifteen hundred dollars, and in cities of the third class, must not exceed five hundred dollars, which compensation shall be in full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him. [*Act approved March 13, 1895.*]

3245. (§ 4769.) *Salary of chief of police.*—The annual salary and compensation of the chief of police must be fixed by ordinance and must not exceed, in cities of the first class, two hundred dollars per month; and in cities of the second class, not to exceed one hundred and fifty dollars per month; and in cities of the third class, seventy-five dollars per month; and in towns not to exceed seventy-five dollars per month, and no fees, percentages or additional compensation must be given to or allowed him. [*Act approved March 13, 1895.*]

3246. (§ 4770.) *Salary of clerk.*—The annual salary and compensation of the city clerk must be fixed by ordinance, and in cities of the first class must not exceed eighteen hundred dollars, which is for all services rendered by him in any capacity; in cities of the second class must not exceed fifteen hundred dollars; in cities of the third class must not exceed five hundred dollars, which compensation for cities of the second and third

class include services rendered by him as city attorney, and in any other capacity; and in towns must not exceed one hundred dollars, which includes all services rendered by him in any capacity. [*Act approved March 13, 1895.*]

3247. (§ 4771.) *Salary must not be increased or diminished during term.*—The salary and compensation of an officer must not be increased or diminished during his term of office.

3248. (§ 4772.) *Constitutional oath of office must be taken.*—Before entering upon office all officers elected or appointed must take and subscribe the constitutional oath of office.

ARTICLE III.

EXECUTIVE POWERS.

Section 3249. Executive officers.

“ 3250. *Powers of Mayor.*

“ 3251. *Mayor to preside, sign warrants, etc.*

“ 3252. *Council to elect president.*

“ 3253. *Duties of clerk.*

“ 3254. *Duties of chief of police.*

“ 3255. *Duties of city attorney.*

“ 3256. *Qualifications and terms.*

“ 3257. *Duties of treasurer.*

“ 3258. *Duties of officers, compensation.*

3249. (§ 4780.) *Executive officers.*—The executive officers of a city or town are the mayor, marshal, and such officers for the assessment, collection, auditing, safe keeping and disbursing the revenue, and keeping the records and journals of the city or town, as the council may provide.

3250. (§ 4781.) *Powers of mayor.*—The mayor is the chief executive officer of the city or town, and has power:

1. To nominate, and, with the consent of the council, to appoint all non-elective officers of the city or town, provided for by the council, except as provided in this title.

2. To suspend, and, with the consent of the council, to remove any non-elected officer, stating in the suspension or removal the cause thereof.

3. To cause the ordinances of the city or town to be executed, and to supervise the discharge of official duty by all subordinate officers.

4. To communicate to the council, at the beginning of every session, and oftener if deemed necessary a statement of the affairs of the city or town, with such recommendations as he may deem proper.

5. To recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town, and the improvement of the government and finances, as he deems expedient.

6. To approve all ordinances and resolutions of the council adopted by it, and, in case the same do not meet his approbation, to return the same to the next regular meeting of the council, with his objections in writing, and no ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

7. The mayor may veto any objectionable part of a resolution or ordinance, and approve the other parts.

8. If the mayor fail to return any resolution or ordinance as aforesaid, the same takes effect without further action.

9. To call special meetings of the council, and when so called he must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

10. To cause to be presented, once in three months, a full and complete statement of the financial condition of the city or town.

11. To bid in for the city or town any property sold at a tax or judicial sale, where the city or town is a party or interested.

12. To procure and have in his custody the seal of the city or town.

13. To take and administer oaths.

14. To call on every male citizen of the city or town, over the age of eighteen years, to aid in the enforcement of the laws and ordinances in case of riots; to call out the militia to aid him in suppressing the same or other disorderly conduct, preventing and extinguishing fires, for securing the peace and safety of the city, or for carrying into effect any law or ordinance; and any person who does not obey such call forfeits to the city or town a fine not exceeding twenty-five dollars.

15. To require of any of the officers of a city or town an exhibit of his books and papers.

16. He has such power as may be vested in him by ordinance of the city or town, in and over all places within five miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

17. The mayor may grant pardons and remit fines and forfeitures for offenses against city or town ordinances, when in his judgment public justice would be thereby subserved, but he must report all pardons granted, with the reasons therefor, to the next council.

18. To perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

3251. (§ 4782.) *Mayor to preside, sign warrants, etc.*—The mayor is the presiding officer of the council, and must sign the journals thereof and all warrants on the city treasurer, and decide by his vote all ties, and has no other vote.

3252. (§ 4783.) *Council to elect president.*—The council may elect a president, who, in the absence of the mayor, is the presiding officer, and may perform the duties of mayor, and in the absence of the president the council may appoint one of its number to act in his place.

3253. (§ 4784.) *Duties of clerk.*—It is the duty of the clerk:

1. To attend all meetings of the council, to record and sign the proceedings thereof and all ordinances, by-laws, resolutions and contracts passed, adopted or entered into, and to sign, number and keep a record of all licenses, commissions or permits granted or authorized by the council.

2. To enter in a book all ordinances, resolutions and by-laws passed and adopted by the council. Such book is called "The Ordinance Book."

3. To enter in a book kept for that purpose the date, amount and person in whose favor and for what purpose warrants are drawn upon the city treasury; such book is called "The Finance Book."

4. To countersign and cause to be published or posted as provided by law, all ordinances, by-laws or resolutions passed and adopted by the council.

5. To file and keep all records, books, papers or property belonging to the city or town, and to deliver the same to his successor when qualified.

6. To make and certify copies of all records, books and papers in his possession, on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury.

7. To give notice of all elections as required by law, and to notify all persons of their election or appointment to office.

8. To make and keep a complete index of the journal ordinance book, finance book, and all other books and papers on file in his office.

9. To perform such duties in and about the assessment, levy and collection of taxes and assessments as may be prescribed by law or ordinance.

10. To take and administer oaths, but must not charge or receive any fees therefor.

11. To certify to the county clerk within ten days after their election and qualification the names and terms for which they are elected, of the mayor, city clerk and city treasurer.

12. To perform such other and further duties as the council may prescribe.

3254. (§ 4785.) *Duties of chief of police.*—It is the duty of the chief of police:

1. To execute and return all process issued by the police judge or directed to him by any legal authority, and to attend upon the police court regularly.

2. To arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance, and bring them before the police judge for trial.

3. To have charge and control of all policemen, subject to such rules as may be prescribed by ordinance, and to report to the council all delinquencies or neglect of duty or official misconduct of policemen for action of the council.

4. The chief of police has the same powers as a constable in the discharge of his duties, but he must not serve a process in any civil action or proceeding except when a city or town is a party.

5. To perform such other duties as the council may prescribe. [Act approved March 13, 1895.]

3255. (§ 4786.) *Duties of city attorney.*—It is the duty of the city attorney:

1. To attend before the police court and other courts, and prosecute in behalf of the city, and to attend to all suits, matters and things in which the city may be legally interested. In no case must the city attorney defend or act as an attorney for the defendant in a criminal action or proceeding.

2. To give his advice or opinion in writing when required by the mayor or council, and to do all such things touching his office as the council may require, or any ordinance may prescribe. The council may employ other or additional attorneys or counsel in special cases, and provide for the payment for their services.

3. To draw for the use of the council any contract, resolution, or ordinance.

4. To perform such other and further duties as the council may prescribe.

3256. (§ 4787.) *Qualifications and terms.*—The city attorney to be appointed shall be a person who has been licensed to practice as an attorney in this state. He shall hold his office for two years unless suspended, or removed, as provided by this act. It shall be the duty of the city attorney to attend before the police court and other courts of the city and the district court and prosecute on behalf of the city, and he shall generally do and perform such other acts as pertain to the office of the city or corporation counsel. He shall, when required, draw for the use of the council, contracts and ordinances for the government of the city, and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities and powers of the corporation. For such services he shall receive such salary and fees as may be fixed by the city council

by ordinance. Nothing herein shall be taken or construed as preventing the city council from employing other and additional counsel in special cases and providing for the payment of such services. The city attorney may be suspended or removed from office by the city council for the neglect, violation or disregard of the duties required by this act or the ordinances of the city. [Act approved March 7, 1895.]

3257. (§ 4788.) *Duties of treasurer.*—It is the duty of the treasurer:

1. To receive all moneys that come to the city or town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, drawn in accordance with law.

2. To perform such duties in the collection of taxes, licenses, or assessments, as are or may be prescribed by law or ordinance.

3. To present on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city or town received by him, and by him disbursed, during the preceding month, and the state of each particular fund, which statement must be verified by his oath.

4. To keep the books and accounts of the city in such a manner as to correctly present the condition of the city finances, which must always be open to the inspection of the mayor, council or any member thereof.

5. To keep a separate account of each fund or appropriation and the debits and credits thereof.

6. To give every person paying to him money as treasurer a receipt therefor, specifying the date of payment, the amount and for what paid.

7. To render at any time an account to the council showing the money on hand and the condition of the treasury.

8. To keep a register of all warrants paid, called "The Registry Book," which must show the date, amount and number, and the person to whom, and the fund from which the same was paid, and to deliver and file with the city clerk all vouchers, warrants or orders paid by him.

9. To annually make out and submit to the city council at its last meeting prior to May first a detailed account of all receipts and expenditures during the past fiscal year, file the same with the clerk, and an abstract thereof must be published in some newspaper in the city or town, or if none is published such abstract must be posted in the room or building occupied by the council.

10. To pay out in the order in which they are registered all warrants presented for payment, when there are funds in the treasury to pay the same.

11. No money must be transferred from one fund to another except by ordinance or resolution of the council. [Act approved March 13, 1895.]

Philipsburg v. Degenhart, 30 Mont. 303; 76 Pac. 695. In an action by a city against the sureties on the official bond of the treasurer, reports of the treasurer to the city council of moneys received and disbursed during the month,

made under this section, may be given in evidence against such sureties, and are *prima facie* true, and, when not contradicted by the sureties, are binding on them.

3258. (§ 4789.) *Duties of other officers, compensation.*—The duties and compensation of the street commissioners, chief of the fire department, city surveyor and other city officers not provided in this title may be prescribed by ordinance.

ARTICLE IV.

LEGISLATIVE POWERS.

- Section 3259. Powers of city councils.*
- “ 3260. *Inspection and measurement of gas and electricity.*
- “ 3261. *What constitutes a quorum.*
- “ 3262. *May prescribe rules.*
- “ 3263. *Ayes and noes must be called, and a majority elects.*
- “ 3264. *Style of ordinance.*
- “ 3265. *Ordinances, how prepared.*
- “ 3266. *Initiative in cities. Petition.*
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- “ 3283. *Accounts must be itemized and sworn to.*
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- “ 3288. *Presentation of claims. Limitation of actions.*
- “ 3289. *Defective highways. Notice of claim for injuries.*

Section 3290. Special privileges must not be granted.

“ 3291. *Grant of franchise must be submitted to tax-paying freeholders.*

“ 3292. *Same. Notice of election.*

“ 3293. *When voted council must pass ordinance.*

“ 3294. *Public baths.*

“ 3295. *Power to maintain and regulate.*

3259. *Powers of city councils.*—The city or town council has power.

1. To make and pass all by-laws, ordinances, orders and resolutions not repugnant to the Constitution of the United States, or of the State of Montana, or of the provisions of this Title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this Title.

2. To levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the State.

3. To license all industries, pursuits, professions and occupations, and to impose penalties for failure to comply with such license requirements; but the amount to be paid for such license must not exceed the sum required by the State law when the State law requires a license therefor.

4. To fix the amount, terms and manner of issuing and revoking licenses, but the council may refuse to issue licenses when it may deem it best for the public interests.

5. To build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

6. To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds, and vacate the same.

7. To provide for lighting and cleaning the streets, alleys, and avenues; to regulate the use of sidewalks, and to require the owners of the premises adjoining to keep the same free from snow or other obstruction, to regulate the deposition and removal of ashes, garbage or other offensive matter, in any street, alley, or on public grounds or on any premises, and to provide for levying the cost of such removal as a special tax against the property from which such matter was deposited.

8. To provide for and regulate street crossings, curbs, and gutters; to regulate and prevent the use of obstruction of streets, sidewalks and public grounds by signs, poles, wires, posting handbills or advertisements, or any obstruction.

9. To regulate and prohibit traffic and sales upon the streets, sidewalks and public grounds.

10. To regulate or prohibit the fast driving of horses, animals or vehicles within the city or town.

11. To regulate and control the laying of railroad tracks, and prohibit the use of engines and locomotives propelled by steam or otherwise, or to regulate the speed thereof when used.

12. To require the lighting of any rail road track or route within a city or town, the cars of which are propelled by steam or otherwise, and fix and determine the number, style and size of the lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location of the lamp posts, and to require the construction of crossings on the line of any railroad track or route within the city or town, the cars of which are propelled by steam or otherwise where the said track intersects or crosses any street, alley or public highway, or runs along the same, and to fix and determine the size and kind of such crossing and the grades thereof, and in case the owner of such railroad fails to comply with such requirements, the council may cause the same to be done, and it may assess the expense thereof against such owner, and the same constitutes a lien on any property belonging to such owner within such city or town, and may be collected as other taxes.

13. To license and authorize the construction and operation of street railroads and require them to conform to the grade of the street as the same are or may be established.

14. To regulate the numbering of houses and lots and to change the same.

15. To provide for the cleaning of waters, water courses and streams within the city, or to alter, straighten or widen the same, and the draining and filling in of ponds, wells or shafts on private property when necessary to the public health or public welfare.

16. To license, tax and regulate auctioneers, peddlers, pawn-brokers, second-hand and junk shops, drivers, porters, saloons, billiard tables, ten-pin alleys, shooting galleries, shows, circuses, street parades, theatrical performances and places of amusements, within the city or town; provided that the power to license tax and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

17. To require the owners and keepers of pawn, second-hand and junk shops, to keep a record of all articles purchased or pawned to them, which record, and the articles purchased or pawned, are subject to the inspection of all police officers of the city or town.

18. To prevent the keepers of pawn, second-hand and junk shops from purchasing any article from a minor without the written consent of the parent or guardian of such minor.

19. To regulate or prohibit dance houses, gambling houses, hurdy gurdy houses, houses of prostitution, houses of lewd resort, within the city or town limits and within three miles thereof; and further to regulate or prohibit within the city or town limits

and within three miles thereof places by whatever name called, or public resort where females act as waitresses or servants and where spirituous or vinous liquors are retailed.

20. To suppress and punish all fraudulent devices and practices for the purposes of obtaining money or property and to prohibit the same or exhibition of immoral publications, prints, pictures or illustrations.

21. To establish markets and market houses, and provide for the supervision and use thereof.

22. To provide for and regulate the inspection of beef, pork, flour, meal and all provisions, oils, whiskey, and other spirits in barrels, hogsheads, and other vessels; to regulate the inspection of milk, water, butter, lard and other provisions; to regulate the vending of meat, poultry, fish, game, and vegetables; to restrain and punish the forestalling of provisions.

23. To regulate the inspection, weighing and measuring of wood, coal, stone, corn, or other grain, and hay, within the city or town.

24. To regulate the construction, use, repair of vaults, cisterns, hydrants, pumps, sewers, and gutters.

25. To prevent and punish intoxication, fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace, or which are offensive to public morals within the city or town, and within three miles of the limits thereof.

26. For the purpose of guarding against fire to prescribe the limits within which wooden or combustible buildings must not be erected, placed or repaired, and to establish fire limits within the city or town.

27. To establish a fire department and prescribe and regulate its duties; to maintain a fire alarm and police telegraph.

28. To erect engine, hose, and hook and ladder houses, and provide engines and other implements for the extinguishment of fire.

29. To inspect chimneys, flues, fire places, stove pipes, ruins, structures and boilers, and when dangerous to require the same to be removed or put in order and prohibit the use thereof until safe.

30. To regulate and prevent the storage or handling of gunpowder, giant powder, nitro-glycerine, or other inflammable explosives or materials, tar, pitch, kerosene, oil and turpentine, and to prohibit the storage of the same within three miles of the city limits.

31. To regulate or prohibit the building of bon-fires, the explosion, use or selling of fireworks, firecrackers, torpedoes, or other pyrotechnics or toy pistols or guns within the city or town.

32. To prohibit and punish cruelty to animals.

33. To define and abate nuisances and to impose fines upon persons guilty of creating, continuing or suffering a nuisance to exist on the premises which they occupy or control.

34. To define vagrancy, and to restrain and punish vagrants, mendicants and persons guilty of disorderly conduct.

35. To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city.

36. To regulate, restrain or prohibit the running at large of horses, cattle, swine, sheep, goats and dogs, or other animals, and to authorize the impounding and sale thereof, if found at large, contrary to ordinance.

37. To license the keeping of dogs, and provide for the killing or destruction thereof, if found running at large without license.

38. To prevent the incumbering of streets, sidewalks, alleys or public grounds with carriages, wagons, lumber, firewood or other obstacles or materials.

39. To prevent the riding or driving of animals, or the drawing or riding of vehicles of any kind on the sidewalks of the city, or the doing damage in any way to the sidewalks.

40. To prevent horse racing, or immoderate driving or driving in the streets of the city or town and to regulate and provide for the hitching of all animals on the streets.

41. To regulate or prohibit coasting, skating, sliding or tobogganing on the streets or alleys, or the indulgence in other amusements dangerous or annoying to the inhabitants, or having a tendency to frighten animals.

42. To regulate the location of slaughter houses, breweries, distilleries, livery stables, foundries, blacksmith shops, planing mills, soap factories, and tanneries, within the city or town, and to prohibit any offensive and unwholesome establishments within the city or town limits or within three miles thereof.

43. To regulate or suppress the erection of poles and the stringing of wires, rods, or cables in the streets, alleys, or within the limits of any city or town.

44. To provide for a Board of Health and to prescribe its powers and duties, and when such Board of Health is provided for the same to have jurisdiction within the city or town limits and within three miles thereof.

45. To establish at a suitable place without the limits of the city or town, in case of necessity, a hospital to prevent the spread of small-pox or other contagious or infectious diseases, and to regulate the control thereof, and do all other acts which may be necessary for the promotion of health, and to prevent the spread of infectious or contagious diseases within the city or town.

46. To establish and regulate cemeteries within or without the city or town, and acquire lands for this purpose, and prohibit the establishment of cemeteries within three miles of the city or town.

47. To fix the compensation and to prescribe the duties of all officers and other employes of the city or town, subject to the limitations mentioned in this Title.

48. To impose fines and penalties for the violation of any city ordinance, but no fine or penalty must exceed Three Hundred Dollars, and no imprisonment must exceed ninety days for any one offense.

49. To levy and collect annually from each able-bodied male resident of the city or town, between the ages of twenty-one and forty-five years, a poll tax not exceeding Three Dollars per capita; and in case of failure or refusal of any person within the prescribed age to pay said tax, to provide by ordinance that the person failing or refusing must work one day on the public streets of the city.

50. To regulate partition fences and party walls not already constructed.

51. To prescribe the thickness, strength, and manner of constructing stone, brick and other buildings, and to order the construction of fire escapes thereon.

52. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the Board of County Commissioners.

53. To erect and organize a work house in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid.

54. To license and regulate hackney carriages, carts, omnibuses, wagons and drays, and to fix the rate to be charged for the carriage of persons and property within the city or town and to the public works and property without the limits of the city or town.

55. To regulate, restrain or prevent the carrying on of manufactories, dangerous in causing or producing fires, and to prevent and suppress the sale of fire-arms, and carrying of concealed weapons.

56. To establish standard weights and measures to be used in the city or town, and to provide for a sealer of standard weights and measures, who has exclusive jurisdiction within the city or town.

57. To provide for the inspection and measuring of lumber and other building materials.

58. To make regulations authorizing the police of the city or town to make arrests of persons charged with crime within the limits of the city or town, and within five miles thereof and along the line of water supply of the city or town.

59. To provide for the planting of trees and the protection of the same.

60. To require from an officer at any time a report in detail of the transactions in his office or any matter connected therewith.

61. To regulate the sales of poisons, and to punish any person for selling or using opium or any preparation thereof, or having the same or any implement to be used in smoking it in his possession, or for keeping, maintaining, visiting, or contributing to the support of a room or place where the same is smoked or used. Druggists may sell opium or any preparation thereof, subject to the general laws of the State in relation thereto.

62. To sell, dispose of, or lease any property belonging to a city or town not held in trust for a specific purpose, and such transfer must be made by ordinance or resolution passed by a two-thirds vote of all the members of the council.

63. To make any and all contracts necessary to carry into effect the powers granted by this Title and to provide for the manners of executing the same.

64. To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: erection of public buildings, construction of sewers, bridges, water-works, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed three per centum of the total assessed valuation of the taxable property of the city or town, as ascertained by the last assessment for State and County taxes; *provided*, that no money must be borrowed on bonds issued for the construction, purchase or securing of a water plant, water system, water supply, or sewerage system, until the proposition has been submitted to the vote of the tax-payers affected thereby of the city or town and the majority vote cast in favor thereof; and, *further provided*, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the said city or town which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt: The additional indebtedness authorized, including all indebtedness heretofore contracted, which is unpaid or outstanding, for the construction of a sewerage sys-

tem, shall not exceed ten per centum over and above the three per cent. heretofore referred to, of the total assessed valuation of the taxable property of the city or town as ascertained by the last assessment for State and county taxes; and, *provided further*, that the above limit of three per centum shall not be extended, unless the question shall have been submitted to a vote of the taxpayers affected thereby and carried in the affirmative by a vote of the majority of said tax-payers who vote at such election. It is *further provided*, that whenever a franchise has been granted to, or a contract made with, any person or persons, corporation or corporations, and such person or persons, corporation or corporations, in pursuance thereof, or otherwise, have established or maintained a system of water supply or have valuable water rights or a supply of water, desired by the city or town for supplying the said city or town with water, the city or town granting such franchise, or entering in such contract, or desiring such water supply, shall, by the passage of an ordinance, give notice to such person or persons, corporation or corporations, that it desires to purchase the plant and franchise and water supply of such person or persons, corporation or corporations, and it shall have the right to so purchase the said plant or water supply upon such terms as the parties agree; in case they cannot agree, then the said city or town shall proceed to acquire the same under the laws relating to the taking of private property for public use; and any city or town acquiring property under the laws relating to the taking of private property for public use shall make payment to the owner or owners of the plant or water supply of the value thereof legally determined, within six months from and after final judgment is entered in the condemnation proceedings. For the purpose of providing the city or town with an adequate water supply for municipal and domestic purposes, the city or town Council shall procure and appropriate water rights and title to the same and the necessary real and personal property to make said rights and supply available, by purchase, appropriation, location, condemnation or otherwise. Cities and towns shall have jurisdiction and control over the territory occupied by their public works and over and along the line of reservoirs, streams, trenches, pipes, drains, and other appurtenances used in the construction and operation of such works and also over the source or stream from which water is taken for the enforcement of its sanitary ordinance, the abatement of nuisances, and the general preservation of the purity of its water supply, with power to enact all ordinances and regulations necessary to carry the powers hereby conferred into effect. For this purpose the city or town shall be authorized to condemn private property in the manner provided by law, and shall have authority to levy a just and equitable tax on all consumers of water for the purpose of defraying the expenses of its procurement.

65. To regulate and provide for the construction or repair of sidewalks and foot pavements, and if the owner of any lot fails to comply with the provisions of the ordinance within such time as may be prescribed thereby, the Council may contract for the construction and repair of such sidewalks or pavements, and the city or town may pay for the same and the amount so paid is a lien upon the lot, and may be enforced or the amount may be recovered against the owner by a suit before any court of competent jurisdiction.

66. To grant the right of way through the streets, avenues and other property of a city or town for the purpose of street or other railroads and to regulate the running and management of the same, and compel the owner of such street or other railroads to keep the street in repair when occupied by such street or other railroad; to regulate the speed of railroad engines, and to require railroad companies to station flagmen at street crossings.

67. To compel the owner of a building to erect fire escapes and proper exits and entrances when necessary for safety.

68. To establish the grade of any street, alley, or avenue, and when the grade has been established, it must not be changed except by a vote of the majority of the council, and not then until the damage to property owners, caused by the change of grade, has been assessed and determined by three disinterested appraisers, who must be appointed by the mayor and confirmed by the council, who must make an appraisal, taking into consideration the benefits, if any, to the property, and file their report with the clerk within ten days after receiving notice of their appointment, and the amount of damages so assessed must be tendered to the owner or his agent before any change of grade is made.

69. To provide for the sprinkling of the streets, alleys and public places of the city or town, and to fix the rates to defray the cost of said work.

70. To regulate the location of steam boilers, the putting up of signs and awnings, and the construction of entrances to basements, cellars, and other floors to buildings from the sidewalks.

71. To prevent and prohibit prize fights, boxing matches of any kind, with or without gloves, or exhibition of prize fighters, boxers or sluggers in the city or town, or within five miles thereof.

72. To require the owner of a sidewalk, house, or other structure which is dangerous to passers-by, to repair or remove the same after notice.

73. To permit the use of the streets and alleys of the City or town for the purpose of laying down gas, water and other mains, but no excavations must be made for such purpose without the permission of the council, or its authorized officer; and the streets and alleys must be placed in as good condition by the per-

son or corporation making the excavation, as they were before the excavation was made; and the mains laid down, and in default thereof the council may order the same to be done at the expense of such person or corporation.

74. To provide for enclosing, improving and regulating all public grounds belonging to the city or town.

75. To condemn private property for opening, establishing, widening or altering any streets, alley, park, sewer, waterway, in the city or town, or for any other public use, and the ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking, and must conform to and the proceeding thereunder had as provided in the Code of Civil Procedure concerning eminent domain.

76. To appropriate money and provide for the payment of the debt and expenses of the city or town, and also the debt of the municipal corporation of which it is the successor.

77. To take a census of the inhabitants of a city or town at any time.

78. To provide for the city or town printing, the contract for which must be let annually to the lowest bidder.

79. To adopt, enter into, and carry out means for securing a supply of water for the use of a city or town or its inhabitants.

80. To create special improvement districts, designating the same by number; to extend the time for payment of assessments levied upon such districts for the improvements thereon for a period not exceeding three years; to make such assessments payable in installments and to pay all expenses of whatever character incurred in making such improvements, with special improvement warrants, which warrants shall bear interest at a rate not to exceed six per centum per annum.

81. To regulate and prohibit the wearing of hats or bonnets at theatres or public places of amusement.

82. To regulate the use and construction of irrigating ditches, drains and flumes within or running through any city or town. [*Act approved March 8th, 1897, § 1.*] (5th Sess. 203-212.)

Palmer v. Helena, 19 Mont. 65; 47 Pac. 211.

Helena W. Co. v. Steele, 20 Mont. 1; 49 Pac. 382. Subdivision 64 of this section providing that no municipality having a water supply furnished by private persons shall erect any water plant to be operated by itself, but, if it desires to acquire such plant, shall purchase or condemn that owned by such private persons is unconstitutional.

Robinson v. Mills, 25 Mont. 395; 65 Pac. 115. A water company authorized by subdivision 73 to make an excavation is liable to an individual for injuries received through its negligence in failing in its duty to restore the street to its former safe condition.

Snook v. Anaconda, 26 Mont. 134; 66 Pac. 757. A city organized under the

Compiled Statutes, Chapter XXII, Fifth Division, is responsible for damages occasioned by reason of its negligence in permitting its streets to remain in a dangerous condition.

Helena v. Rogan, 26 Mont. 469; 68 Pac. 799. The city has the right to acquire by condemnation proceedings water rights to establish a water supply system.

Jordan v. Andrus, 27 Mont. 26; 69 Pac. 118.

Helena v. Rogan, 27 Mont. 137; 69 Pac. 710. In condemnation proceedings to acquire title to property for a water supply, it is not necessary to allege or prove that the city had endeavored to obtain the consent of the owners of the property to the taking thereof.

In re O'Brien, 29 Mont. 540; 75 Pac.

197. The adoption of the local option liquor law in a county prohibits the sale of intoxicating liquors in incorporated towns within the county.

Butte v. Paltovich, 30 Mont. 18; 75 Pac. 521. An ordinance making it unlawful to keep open a pawnshop after 6 o'clock p. m. is not a prohibition of the business but a regulation of it under subdivision 16.

State v. Mayor, 30 Mont. 343; 76 Pac. 759.

Helena v. Kent, 32 Mont. 284; 80 Pac. 259. An incorporated city can proceed

against the occupant as well as the owner of premises and require him to keep the sidewalk adjoining them free from snow and ice.

State v. Helena, 34 Mont. 72; 85 Pac. 744.

Billings v. Cook, 35 Mont. 104; 88 Pac. 658. An ordinance of an incorporated city making an unlawful discrimination between defendants and others engaged in the same business at the time of its enactment, is inoperative as to the defendants.

3260. *Inspection and measurement of gas and electricity.*—

The council of any incorporated city or town shall have power, by ordinance, to provide for and regulate the inspection and the measurement of gas, electric or other light, and electric or other power, sold within its limits or brought into or carried through any such city or town. [*Act approved March 1, 1907, § 1.*] (*10th Sess. Chap. 57.*)

3261. (§ 4801.) *What constitutes a quorum.*—A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated, and may compel the attendance of absent members under such rules and penalties as the council may perscribe.

3262. (§ 4802) *May perscribe rules.*—The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected, and must cause to be kept a journal of the proceedings, which must be open to inspection.

3263. (§ 4803.) *Ayes and noes must be called, and a majority elects.*—The ayes and noes must be called and recorded on the final passage of any ordinance, by-law, or resolution, or making any contract, and the voting on the election or appointment of any officer must be viva voce, and a majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

3264. (§ 4804.) *Style of ordinance.*—The style of ordinances may be as follows: "Be it ordained by the council of the city of—, or town of—," and all ordinances may be published or posted, as prescribed by the council.

3265. (§ 4805.) *Ordinances, how prepared.*—All ordinances, by-laws and resolutions must be passed by the council and approved by the mayor, or the person acting in his stead, and must be recorded in a book kept by the clerk called "The Ordinance Book," and numbered in the order in which they are passed, and take effect from and after their passage, except as otherwise ordered, and no ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances. [*Act approved March 2, 1895.*]

3266. *Initiative in cities. Petition.*—Ordinances may be proposed by the legal voters of any city or town in this state in the manner provided in this act. Eight per cent of the legal voters of any city or town may propose to the city or town council an ordinance on the subject within the legislative jurisdiction and powers of such city or town council or an ordinance amending or repealing any prior ordinance or ordinances. Such petition shall be filed with the city or town clerk. It shall be the duty of the city or town clerk to present the same to the council at their first meeting next following the filing of the petition. The council may, within sixty days after the presentation of the petition to the council, pass an ordinance similar to that proposed in the petition, either in exact terms or with such changes, amendments or modifications as the council may decide upon. If the ordinance proposed by the petition be passed without change it shall not be submitted to the people, unless a petition for referendum demanding such submission shall be filed under the provisions of this act. If the council shall have made any change in the proposed ordinance, a suit may be brought in the district court in and for the county in which the city or town is situated, to determine whether or not the change is material. Such suit may be brought in the name of any one or more of the petitioners. The city shall be made the party defendant. Any elector of the city or town may appear in such suit in person or by counsel on the hearing thereof, but the court shall have the power to limit the number of counsel who shall be heard on either side and the time to be allowed for arguments. It shall only be necessary to state in the complaint that a petition for an ordinance was filed in pursuance of this act; that the city council passed an ordinance on the subject different from that proposed in the petition, and that the plaintiff desires a construction of the ordinance so passed to determine whether or not it differs materially from that proposed. The petition and the ordinance proposed thereby, and the ordinance actually passed, may be set out in the complaint, or copies thereof annexed to the complaint. The names to the petition need not be set out. Such cases shall be advanced and brought to hearing as speedily as possible and have precedence over other cases, except criminal and taxation cases. The court shall have jurisdiction in such cases to determine whether or not the change made by the city council is material, and also whether the petition was regular in form or substance, and shall also have power to decide, if the fact be put in issue by the defendant, whether or not the petition was signed by a sufficient number of voters and was regular in form. If the court shall decide that the change was material and that the petition was regular in form and signed by a sufficient number of legal voters, then the ordinance proposed by the peti-

tion shall be submitted to the people as provided in this act. If the court shall decide that the ordinance passed by the council was not materially different from that proposed in the petition, or the petition was not regular in form, or not signed by a sufficient number of legal voters, the ordinance shall not be submitted to the people. If the court shall decide that the changes made by the council were material, but that the petition was irregular for some reason, or not properly or sufficiently signed, a new petition regular in form may be presented by the required number of legal voters asking the council to submit such ordinance to the people, and thereupon the same shall be so submitted as provided in this act. If the council shall not within sixty days pass an ordinance on the subject of the ordinance proposed in the petition, then the ordinance proposed by the petition, shall be submitted to the people. Before submitting such ordinance to the people, the mayor or city or town council may direct that a suit be brought in the district court in and for the county, in the name of the city or town, to determine whether the petition and ordinance are regular in form, and whether the ordinance so proposed would be valid and constitutional. The complaint shall name as defendants not less than ten nor more than twenty of the petitioners. In addition to the names of such defendants, in the caption to the body of the complaint, there shall be added the words "and all petitioners whose names appear on the petition for an ordinance filed on the.....days of.....in the year,," stating the date of the filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition thereto shall be published at least once, at the expense of the city, in at least one newspaper published in the city or town. In all suits brought under this section the decision of the district court shall be final, except in cases where it shall decide that the proposed ordinance would be unconstitutional or invalid as being beyond the powers of the city or town council, and in such excepted cases the petitioners, or any of them, may appeal to the supreme court as in other cases but shall not be required to give any bond for costs. The decision of the district court holding such ordinance valid or constitutional shall not, however, prevent the question to be raised subsequently, if the ordinance shall be passed and go into effect, by any one affected by the ordinance. No costs shall be allowed to either side in suits or appeals under this section. [*Act approved March 8, 1907, § 1.*] (*10th Sess. Chap. 167.*)

3267. *Submission of question at regular election.*—Any ordinance proposed by petition as aforesaid, which shall be entitled to be submitted to the people, shall be voted on at the next regular election to be held in the city or town, unless the petition therefor shall ask that the same be submitted at a special election and

such petition be signed by not less than fifteen per cent of the electors qualified to vote at the last preceding municipal election. [Act approved March 8, 1907, § 2.] (10th Sess. Chap. 157.)

3268. *No ordinance to be effective until thirty days after passage.*—No ordinance or resolution passed by the council of any city or town shall become effective until thirty days after its passage, except general appropriation ordinances providing for the ordinary and current expenses of the city or town, excepting also emergency measures, and in the case of emergency measures the emergency must be expressed in the preamble or in the body of the measure, and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health and safety, and shall not include a franchise or license to a corporation or individual, nor any provisions for the sale of real estate, nor any lease or letting of any property for a period exceeding one year, nor the purchase or sale of personal property exceeding five thousand dollars in value. [Act approved March 8, 1907, § 3.] (10th Sess. Chap. 167.)

3269. *Referendum petition.*—During the thirty days following the passage of any ordinance or resolution five per cent of the qualified electors of the city or town may, by petition addressed to the council, and filed with the clerk of the city or town, demand that such ordinance or resolution, or any part or parts thereof, shall be submitted to the electors of the city or town. [Act approved March 8, 1907, § 4.] (10th Sess. Chap. 167.)

3270. *Referendum to be had at regular election.*—Any measure on which a referendum is demanded under the provisions of this act shall be submitted to the electors of the city or town at the next municipal election, *provided* the petition or petitions shall have been filed with the city clerk at least thirty days before such election. If such petition or petitions be signed by not less than fifteen per cent of the qualified electors of the city or town, the measure shall be submitted at a special election to be held for the purpose. [Act approved March 8, 1907, § 5.] (10th Sess. Chap. 167.)

3271. *Special election may be ordered.*—The city or town council may in any case order a special election on a measure proposed by the initiative, or when a referendum is demanded, or upon any ordinance passed by the city or town council, and may likewise submit to the electors, at a general election, any ordinance passed by the city or town council. [Act approved March 8, 1907, § 6.] (10th Sess. Chap. 167.)

3272. *Proclamation of election.*—Whenever a measure is ready for submission to the electors, the clerk of the city or town shall, in writing, notify the mayor thereof, who, forthwith,

shall issue a proclamation setting forth the measure and the date of the election or vote to be had thereon. Said proclamation shall be published four days in four consecutive weeks in each daily newspaper in the municipality, if there be such, otherwise in the weekly newspapers published in the city or town. In case there is no weekly newspaper published, the proclamation and the measure shall be posted conspicuously throughout the city or town. [*Act approved March 8, 1907, § 7, (10th Sess. Chap. 167.)*]

3273. *Ballots and method of voting.*—The question to be balloted upon by the electors shall be printed on the initiative or referendum ballot and the form shall be that prescribed by law for questions submitted at state elections. The referendum or initiative ballots shall be counted, canvassed and returned by the regular board of judges, clerks, and officers, as votes for candidates for office are counted, canvassed and returned. The returns for the question submitted by the voters of the municipality shall be on separate sheets and returned to the clerk of the municipality. The return shall be canvassed in the same manner as the returns of regular elections for municipal officers. The mayor of the municipality shall issue his proclamation as soon as the result of the final canvass is known, giving the whole number of votes cast in the municipality for and against such measure, and it shall be published in like manner as other proclamations herein provided for. A measure accepted by the electors shall take effect five days after the vote is officially announced. [*Act approved March 8, 1907, § 8, (10th Sess. Chap. 167.)*]

3274. *Qualifications of voters.*—The qualifications for voting on questions submitted to the electors, under the provisions hereof, shall be the same as those required for voting at municipal elections in the city or town at elections for mayor or aldermen thereof. And where, by the laws of the state, or by ordinance of the city or town made in pursuance thereof, electors are required to register in order to be qualified to vote at municipal elections, the registration book or books shall be prima facie evidence of the right to sign any petition herein provided for. [*Act approved March 8, 1907, § 9, (10th Sess. Chap. 167.)*]

3275. *Forms of petitions.*—The form of petitions and the proceedings under this act, shall conform as nearly as possible, with the necessary changes as to details, to the provisions of the laws of the state relating to the initiative and referendum, and be regulated by such laws except as otherwise provided in this act. The city clerk shall perform the duties which, under the state laws devolve upon the county clerk and secretary of state, insofar as the provisions relating thereto may be made to apply to the case of the city or town clerk; but it shall not be necessary to

mail or distribute copies of the petitions or measures to the electors of the city or town. [*Act approved March 8, 1907, § 10.*] (*10th Sess. Chap. 167.*)

3276. *To what ordinances applicable.*—The provisions of this act regarding the referendum shall not apply to ordinances which are required by any other law of the state to be submitted to the voters or the electors or tax payers of any city or town. [*Act approved March 8, 1907, § 11.*] (*10th Sess. Chap. 167.*)

3277. (§ 4806.) *Officers must not be interested in contracts.*—The mayor, or any member of the council, or any city or town officer, or any relative or employe thereof, must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

State v. Rickards, 16 Mont. 145; 40 Pac. 210.

3278. *Awarding contracts.*—All contracts for work, or for supplies, or material, for which must be paid a sum exceeding Two Hundred and Fifty (250) Dollars, must be let to the lowest, responsible bidder, under such regulations as the council may prescribe; *Provided* that no contract shall be let, extending over a period of three years, or more, without first submitting the question to a vote of the resident tax payers of said city or town. [*Act approved February 27, 1907, § 1.*] (*10th Sess. Chap. 48.*)

3279. (§ 4808.) *Contractor, oath of.*—No money must be paid to any person claiming under a contract with the council, until such person has first filed with the clerk a statement, under oath, disclosing the names of all persons directly or indirectly interested in the contract, of the proceeds or profits thereof, declaring that no persons other than those named are interested, and that no person forbidden by this title has any interest in the same.

State v. Great Falls, 19 Mont. 527; 49 Pac. 18.

3280. (§ 4809.) *Alteration and modification of contract, how made.*—When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council, and such resolution is of no effect until the price to be paid for the same is agreed to in writing, and signed by the contractor and approved by the council.

3281. (§ 4810.) *No allowance for extra work.*—No contractor must be allowed anything for extra work, caused by an alteration or modification unless a resolution is made and an agreement signed as provided in the preceding section, nor must he, in any case, be allowed more for such alteration than the price fixed by such agreement.

3282. (§ 4811.) *Accounts must be allowed.*—All accounts and demands against a city or town must be submitted to the

council, and if found correct must be allowed, and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner, specifying for what purpose and by what authority it is issued, and out of what fund it is to be paid, and the treasurer must pay the same out of the proper fund.

3283. (§ 4812.) *Accounts must be itemized and sworn to.*—All accounts and demands against a city or town must be presented to the council, duly itemized and accompanied by an affidavit of the party or his agent, stating the same to be a true and correct account against the city or town for the full amount for which the same is presented, and that the same accrued as set forth, and with all necessary and proper vouchers, within one year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon.

3284. *City warrants. Rate of interest.*—When any warrant, drawn upon the treasurer of a city or town pursuant to any ordinance or resolution or direction of the council of such city or town, is presented to the city or town treasurer for payment, and the same is not paid for want of funds, such treasurer must endorse thereon "Not paid for want of funds," annexing the date of presentation, and sign his name thereto; and from that time until such warrant is called for payment the warrant shall bear interest at a rate fixed by ordinance and not to exceed six per cent per annum. [*Act approved March 3, 1897, § 1.*] (5th Sess. 75.)

3285. *Call for payment.*—When there are moneys in the city or town treasury applicable to the payment of any warrants drawing interest, sufficient to pay the same, the city or town treasurer must give notice in some newspaper published in such city or town, or if none is published therein then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer, stating that he is ready to pay the said warrants, and giving the number of the warrants to be paid. From the time of the first publication or posting of such notice the warrants so called shall cease to draw interest. [*Act approved March 3, 1897, § 2.*] (5th Sess. 75-6.)

3286. *Registry of warrants.*—Upon the presentation of any warrant or warrants endorsed, as specified in § 3284 (1), it shall be the duty of the city treasurer to record the same in a book to be provided for that purpose, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof, and all warrants to be re-

deemed, as provided for in § 3285 (2) of this Act, shall be redeemed in the order of their registration, beginning with the date of the warrant so first registered. [*Act approved March 3, 1897, § 3.*] (5th Sess. 75.)

3287. *Allowance and payment of claims. Cash basis.*—All accounts and demands against a city or town must be submitted to the council and if found correct must be allowed and an order made that the demand be paid, upon which the mayor must draw a warrant upon the treasurer in favor of the owner specifying for what purpose and by what authority it is issued, and out of what funds it is to be paid and the treasurer must pay the same out of the proper fund; *Provided*, however, that in case the total indebtedness of a city or town has reached the limit of three per cent provided in section 6 of Article XIII of the Constitution of the State of Montana it shall be lawful for, and said city or town is hereby authorized and empowered to thereafter manage and conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the city or town out of the cash in the city or town treasury and derived from its current revenues; under such restrictions and regulations as the city or town council may by ordinance prescribe, and in the event that payment be made in advance, the city or town shall have power to require a cash deposit as collateral security and indemnity equal in amount to such payment and may hold the same as a special deposit with the city treasurer, in package form as a pledge for the fulfillment and performance of the contract or obligation for which said advance shall have been made; and *Provided, further*, that before the payment of the current expenses above mentioned the city or town council shall first set apart sufficient moneys to pay the interest upon its legal, valid, outstanding bonded indebtedness and any sinking funds therein provided for, and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims. [*Act approved February 25, 1903, § 1.*] (8th Sess. Chap. 30.)

Helena W. Co. v. Helena, 27 Mont. 208; 70 Pac. 514. Where a city had exceeded its debt limit, it could not incur an indebtedness not payable from a specially authorized tax, but payable from funds previously appropriated, under an agreement that the claimants should accept warrants in payment of their claims, and if the warrant should not be paid, the city should not be liable therefor. The payment of such claims on the theory that the appropriation by ordinance was an assignment of the funds so appropriated for the payment of the claims was unauthorized.

Dawes v. Great Falls, 31 Mont. 13;.

77 Pac. 310. These sections do not apply to a claim for damages arising from personal injuries.

Helena W. Co. v. Helena, 31 Mont. 246; 78 Pac. 221. The determination of what is a current expense is for the courts; but the determination of the city council as to whether a particular current expense is reasonable and necessary is not subject to review by the courts in the absence of fraud or abuse of discretion. An expenditure to install and operate a water system to belong to the city is not for current expenses, and not authorized by this statute.

3288. *Presentation of claims. Limitation of actions.*—All accounts and demands against a city or town must be presented

to the council duly itemized and accompanied by an affidavit by the party or his agent, stating the same to be a true and correct account against the city or town for the full amount for which the same is presented, and that the same accrued as set forth, and with all necessary and proper vouchers, within one year from the date the same accrued; and any claim or demand not so presented within the time aforesaid is forever barred, and the council has no authority to allow any account or demand not so presented, nor must any action be maintained against the city or town for or on account of any demand or claim against the same, until such demand or claim has first been presented to the council for action thereon; *provided*, however, that in case the total indebtedness of a city or town has reached three per centum of the total assessed valuation of the taxable property of such city or town, as ascertained by the last assessment for state and county taxes, it shall be lawful for, and such city or town is hereby authorized and empowered to conduct its affairs and business on a cash basis as provided and contemplated by § 3287 (1) of this act. [Act approved February 25th, 1903, § 2.] (8th Sess. Chap. 30.)

Dawes v. Great Falls, 31 Mont. 13;
71 Pac. 310.

Helena W. Co. v. Helena, 31 Mont.
245; 78 Pac. 221.

3289. *Defective highways. Notice of claim for injuries.*—Before any city or town in this state shall be liable for damages for, or on account of, any injury or loss alleged to have been received or suffered by reason of any defect in any bridge, street, road, sidewalk, culvert, park, public ground, ferry boat, or public works of any kind in said city or town, the person so alleged to be injured, or some one in his behalf, shall give to the city or town council, or trustee, or other governing body of such city or town, within sixty days after the alleged injury, notice thereof; said notice to contain the time when and the place where said injury is alleged to have occurred. [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 93.)

3290. (§ 4813.) *Special privilege must not be granted.*—The council must not grant a franchise or special privilege to any person, and its powers are those only prescribed in this title and those necessarily incident thereto.

3291. *Grant of franchise must be submitted to tax-paying freeholders.*—No franchise for any purpose whatsoever shall be granted by any city or town, or by the mayor or city council thereof, to any person or persons, association or corporation, without first submitting the application therefor to the resident freeholders whose names shall appear on the city or county tax roll preceding such election. [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 85.)

3292. *Same. Notice of election.*—A notice of such election must be published at least in one daily newspaper, if there be one

published in the city or town, and if not, in some weekly newspaper of general circulation, at least once a week for three successive weeks, and such notice must be posted in three public places in the city or town. The notice must state the time and place of holding the election, and the character of any such franchise applied for, and the valuable consideration if any there be to be derived by the city. At such election the ballots must contain the words, "For granting franchise," "Against granting franchise," and in voting, the elector must make a cross thus, "X," opposite the answer he intends to vote for. Such election must be conducted and canvassed, and the return made in the same manner as other city or town elections. [*Act approved March 5th, 1903, § 2.*] (8th Sess. Chap. 85.)

3293. *When voted council must pass ordinance.*—If the majority of votes cast at the election be "For granting franchise," the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance. [*Act approved March 5th, 1903, § 3.*] (8th Sess. Chap. 85.)

3294. *Public baths.*—That all cities or towns incorporated under the laws of the State of Montana, in addition to other powers conferred upon them, are hereby empowered and authorized to establish and maintain a public bathing place within said city or town, and to defray the cost and expense of maintaining said public bathing place, said city or town is hereby authorized and empowered to contract an indebtedness, upon behalf of said city or town, upon the credit thereof, by borrowing money or issuing bonds; *provided*, that no money may be borrowed, and no bonds may be issued for said purpose, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town and a majority vote be cast therefor. [*Act approved February 10, 1905, § 1.*] (9th Sess. Chap. 12.)

3295. *Power to maintain and regulate.*—Power is hereby granted to the city or town council of all cities and towns incorporated under the laws of the State of Montana, to make and pass all by-laws, ordinances, resolutions and orders necessary for the establishment, maintenance and regulation of a public bathing place within said city or town, including the power to establish by ordinance a reasonable and uniform charge for the privilege of using said bathing place. [*Act approved February 10, 1905, § 2.*] (9th Sess. Chap. 12.)

ARTICLE V.

JUDICIAL POWERS.

Section 3296. *Police court established.*

" 3297. *Jurisdiction of police courts.*

" 3298. *Jurisdiction for violation of ordinance and civil and criminal jurisdiction.*

Section 3299. When judge cannot act.

“ 3300. *Preliminary examinations, proceedings in.*

“ 3301. *Proceedings in criminal actions.*

“ 3302. *Proceedings in civil actions.*

“ 3303. *Who to prosecute.*

3296. (§ 4910.) *Police court established.*—A police court is established in each city or town, which court must always be open, except upon non-judicial days, and upon such days it may transact criminal business only.

3297. *Jurisdiction of police courts.*—The police court has concurrent jurisdiction with the justice of the peace of the following public offenses committed within the county:

1. Petit Larceny.
2. Assault and battery, not charged to have been committed upon a public officer in the discharge of his official duty, or with intent to kill.
3. Breaches of the peace, riots, affrays, committing willful injury to property and all misdemeanors punishable by fine not exceeding Five Hundred (\$500) Dollars, or by imprisonment not exceeding six months, or by both fine and imprisonment.
4. Of proceedings respecting vagrants, lewd or disorderly persons. Such offenses must be prosecuted in the name of the State of Montana.

Said police court shall have no jurisdiction of any civil cause, except as provided in Section 3298 (4912) of the Political Code of Montana. [Act approved February 24th, 1903, § 1.] (8th Sess. Chap. 16.)

3298. (§ 4912.) *Jurisdiction for violation of ordinances and civil and criminal jurisdiction.*—The police court also has exclusive jurisdiction:

1. Of all proceedings for the violation of any ordinance of the city or town, both civil and criminal, which must be prosecuted in the name of the city or town.
2. Of any action for the collection of taxes and assessments levied for city or town purposes; or for the erection or improvement of public buildings; for the laying out, or opening, or improving any public street or sidewalk, alley or bridge; or for the purchase of or the improvement of any public grounds; or for any and all public improvements made or ordered by the city or town within its limits, when the amount of the tax or assessments sought to be collected against the person assessed does not exceed three hundred dollars; but no lien upon the property taxed or assessed for the non-payment of the taxes or assessment can be foreclosed in any such action.
3. Of an action for the collection of money due to the city or town or from the city or town, to any person, when the amount sought to be collected, exclusive of interest and costs, does not exceed three hundred dollars.

4. For the breach of any official bond given by any city or town officer, and for the breach of any contract, and any action for damages in which the city or town is a party, or is in any way interested; and all forfeited recognizances given to or for the benefit or in behalf of the city or town; and upon all bonds given upon any appeal taken from the judgment of the court in any action above named where the amount claimed, exclusive of costs, does not exceed three hundred dollars.

5. For the recovery of personal property belonging to the city or town, when the value of the property (exclusive of the damages for the taking or detention) does not exceed three hundred dollars; and,

6. Of an action for the collection of any license required by any ordinance of the city or town.

Helena v. Kent, 32 Mont. 288; 80 Pac. 261. Non-compliance with an ordinance, making it the duty of an occupant of premises within the limits of a city to keep a sidewalk free from snow and ice, is not in its essence a crime or misdemeanor and actions arising therefrom are properly prosecuted in the name of the city.

3299. (§ 4913.) *When judge cannot act.*—In all cases in which the judge is a party, or in which he is interested, or when he is related to either party by consanguinity or affinity within the sixth degree; and, in case of his sickness, absence, or inability to act, the police judge or mayor may call in a justice of the peace residing in the city or town to act in his place and stead.

3300. (§ 4914.) *Preliminary examinations, proceedings in.*—Proceedings in preliminary examinations in criminal actions in the police court must be had in conformity with the provisions of part II., title III., chapter VII., of the Penal Code, § § 9077 (1670) 9101 (1694).

3301. (§ 4915.) *Proceedings in criminal actions.*—Proceedings in police courts in criminal actions triable in such courts are regulated in part II., title XI., chapter I., of the Penal Code, § § 9584 (2680) 9629 (2725).

3302. (§ 4916.) *Proceedings in civil actions.*—The proceedings of the police court in civil actions are regulated in part II., title XII., of the Code of Civil Procedure, § § 7092 (1700) 7095 (1703.)

3303. (§ 4917.) *Who to prosecute.*—The city attorney must prosecute all cases for the violation of any ordinance, and to prosecute, conduct and control all proceedings in cases mentioned in § 3298 (4912), both in the police court and appeal therefrom to the district court. [Act approved March 13, 1895.]

ARTICLE VI.

DEPARTMENT OF POLICE.

- Section 3304. Police department.*
- “ 3305. *Mayor to have charge of police department.*
- “ 3306. *Terms of members of the police force.*
- “ 3307. *Examining board for police department.*
- “ 3308. *Examination of applicants for position on police force.*
- “ 3309. *Presentation and trials of charges against policemen.*
- “ 3310. *Vacancies to be filled from eligible list.*
- “ 3311. *Exemption of members of police force.*
- “ 3312. *Members of the police department not to take part in political conventions.*
- “ 3313. *Prohibited from soliciting for votes.*
- “ 3314. *City council may make additional regulations.*
- “ 3315. *Qualifications of police officer.*
- “ 3316. *Salary of chief of police.*
- “ 3317. *Repealing clause.*

3304. *Police department.*—There shall be in every city and town of this state a police department which shall be organized, managed and controlled as in this Act provided. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 136.)

3305. *Mayor to have charge of police department.*—The mayor of all cities and towns shall have charge of and supervision over the police department thereof. He shall appoint all the members and officers thereof. Subject to the provisions of this Act, he shall have the power to suspend or remove any member or officer of the force. He shall make rules and regulations, not inconsistent with the provisions of this Act, the other laws of the state or the ordinances of the city or town council, for the government, direction, management and discipline of the police force. Act approved March 7, 1907, § 2.] (10th Sess. Chap. 136.)

3306. *Terms of members of the police force.*—All the members of the police force shall be first appointed for probationary terms of six months, and thereafter the mayor may appoint the members thereof to hold, and if so appointed they shall hold, during good behavior, or until by age or disease they become permanently incapacitated to discharge their duties. [Act approved March 7, 1907, § 3.] (10th Sess. Chap. 136.)

3307. *Examining board for police department.*—In cities of the first class the mayor shall nominate, and with the consent of the council appoint, three residents of such city, who shall have the qualifications required by law to hold a municipal office therein, and who shall constitute a board to be known by the name of “The Examining and Trial Board of the Police Department,” and

who shall hold office for two years and until their successors are appointed and qualified. The council of any town or city other than a city of the first class may provide by ordinance for such a board in any such town or city. The compensation of the members of such board shall be fixed by the council, but shall not exceed ten (10) dollars per day, nor more than fifty (50) dollars per month for each member in cities of the first class; nor more than five (5) dollars per day, nor more than twenty-five (25) dollars per month for each member in any other city or in any town. [*Act approved March 7, 1907, § 4.*] (10th Sess. Chap. 136.)

3308. (§ 3308.) *Examination of applicants for position on police force.*—All applicants for positions on the police force shall be required successfully to undergo an examination before this board, and to receive a certificate from said board that the applicant is qualified for appointment upon the police force. It shall be the duty of the board to examine all such applicants as to their legal, mental, moral and physical qualifications and ability to fill the position of member of the police department, and shall, subject to the approval of the mayor, make rules and regulations regarding such examinations, not inconsistent with this Act or the laws of the state. And said board shall also have the jurisdiction, and it shall be its duty, to hear, try and decide all charges brought by any person or persons against any member or officer of the police department. A notice of not less than two days must be given to the accused of any charge made against him and of the time set for the hearing and trial thereof. No member or officer of the police force in cities of the first class shall be discharged without a hearing or trial before said board, and if such a board be instituted in any city of any other class, or in any town, then the same rule shall prevail regarding hearings and trials and the right thereof as in cities of the first class. The mayor, and the chief of police subject to the approval of the mayor, shall have the power to suspend a policeman, or any officer under the chief, for a period of not exceeding ten days in any one month without any hearing or trial. The examining board shall decide whether the charge or complaint is proven or not proven but shall not have the power to discipline or impose a punishment. Where a charge or complaint against a member of the force is found proven by the board, the mayor, or the chief of police with the approval in writing of the mayor, may order the suspension from pay for some definite time of the member or officer found guilty or impose upon him a fine not exceeding Fifty dollars, or reduce his grade, or discharge him from the police force, or subject him to any other discipline prescribed in the rules of the police department which is not inconsistent with the provisions of this Act or with other laws of the State. The de-

cision of the board shall be final and conclusive, and shall not be subject to review by any court, on question of fact. The district court of the proper county shall have jurisdiction, however, in a suit brought by the officer or member, to determine whether the essential requirements of law have been complied with in the matter of his trial.

3309. *Presentation and trials of charges against policemen.*—If a charge be made by any person against any member or officer of the police force that he is incompetent, or has been guilty of neglect of duty, misconduct in his office, or of conduct unbecoming a police officer, the charge must be put in writing in the form required by the rules of the examining and trial board and a copy thereof must be served upon the accused officer or member at least two days before the hearing. It is then the duty of the said board to hear, try and determine the charge according to the rules of said board and of the police department. The accused has the right to be present at this trial and be heard in person and by counsel and to give and furnish evidence in his defense. All trials shall be open to the public. The chairman, or acting chairman, of the board shall have power to issue subpoenas, attested in its name, to compel the attendance of witnesses upon any proceeding authorized by the rules and regulations of said board or of the police department, and any person duly served with a subpoena is bound to attend in obedience thereto, and the board shall have the same authority to enforce obedience to the subpoena, and to punish for disobedience thereof, as is possessed by justices of the peace in like cases. [Act approved March 7, 1907, § 6.] (10th Sess. Chap. 136.)

3310. *Vacancies to be filled from eligible list.*—In case of any vacancy in the police force, the same shall be filled from a list of persons eligible to appointment under this Act. [Act approved March 7, 1907, § 7.] (10th Sess. Chap. 136.)

3311. *Exemption of members of police force.*—No member of the police force shall be liable to military or jury duty, or to arrest on civil process, while actually on duty, nor shall he hold any other office, or be employed in any other department of the city or town government. [Act approved March 7, 1907, § 8.] (10th Sess. Chap. 136.)

3312. *Members of the police department not to take part in political conventions.*—No officer or member of the police department shall be a member of, or delegate to, any political convention, nor shall he be present at such convention, except in the performance of duty relating to his position as such officer or member. [Act approved March 7, 1907, § 9.] (10th Sess. Chap. 136.)

3313. *Prohibited from soliciting for votes.*—It shall be unlawful for any officer or member of the police department to solicit

any person to vote at any political caucus, primary or election for any candidate, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary or at any election, or be a member of any political committee. [*Act approved March 7, 1907, § 10.*] (*10th Sess. Chap. 136.*)

3314. *City council may make additional regulations.*—In addition to the provisions herein contained, the city or town council may make any ordinances, not inconsistent with this Act, or any law of the State, for the government of the police department, and for regulating the powers and duties of its officers and members. [*Act approved March 7, 1907, § 11.*] (*10th Sess. Chap. 136.*)

3315. *Qualifications of police officer.*—The members of the police department, at the time of their appointment under this Act, shall be not less than twenty-one years of age nor more than fifty years of age, but this restriction shall not apply to any member of the present police department; and they shall have been citizens of the United States and residents of the city or town at least two years prior to such appointment. They must be able to speak and write understandingly the English language. [*Act approved March 7, 1907, § 12.*] (*10th Sess. Chap. 136.*)

3316. *Salary of chief of police.*—The salary of the chief of police in cities of the first class shall be not less than one hundred nor more than three hundred dollars per month, and within these limits the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council. [*Act approved March 7, 1907, § 13.*] (*10th Sess. Chap. 136.*)

3317. *Repealing clause.*—All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed, but nothing herein contained shall abridge any of the powers possessed by the mayor of any city or town under any other provision of law or any ordinance. [*Act approved March 7, 1907, § 14.*] (*10th Sess. Chap. 136.*)

ARTICLE VII.

BOARD OF PARK COMMISSIONERS.

Section 3318. Park commissioners. Appointment. Term. Qualifications. Clerk.

- “ 3319. *Powers and duties.*
- “ 3320. *Funds, how disbursed.*
- “ 3321. *Meetings. General regulations.*
- “ 3322. *Tax levy for park purposes.*
- “ 3323. *Allowance of claims.*
- “ 3324. *Appointment of board.*

3318. *Park commissioners. Appointment. Term. Qualifications. Clerk.*—That there is hereby created in all cities of the

first class a board of park commissioners which shall be composed of the mayor of the city and six other persons to be appointed by the governor of the state. The six persons so to be appointed shall have the same qualifications for the office of park commissioners as are required by Section 3225 (4749) of the Political Code for the office of mayor. The term of office of each park commissioner shall be two years from and after the first day of May of the year in which he is appointed and until his successor is appointed and qualified, save and except that three of the commissioners first appointed shall hold office for the period of one year from and after the first day of May, 1901, and until their successors are appointed and qualified. Such board of park commissioners shall constitute a department of the city government with the powers in this act provided. Before entering upon the discharge of his duties, each park commissioner shall take and subscribe the oath provided by Section 362 (1010) of the Political Code, which oath shall be filed in the office of the city clerk. On the first Monday of May in each year, said board of park commissioners shall meet and organize by electing one of their number president and one of their number vice-president who shall hold their office respectively for the term of one year. The president, and in his absence the vice-president, shall preside at all meetings of the board and shall countersign all warrants issued by the board and perform such other duties as shall be required and directed by the board. The city clerk shall be ex-officio clerk of the board of park commissioners and shall attend all meetings of said board and keep correct minutes of all proceedings of said board in a book to be provided for that purpose by it, to be called "Record of Board of Park Commissioners of the City of _____." It shall be the duty of the city clerk, as such clerk of the board of park commissioners, to keep an accurate account of all transactions of said board separate from other city accounts, and to make and submit in writing to said board at its first meeting in January in each year a report under oath showing in detail all of the receipts and disbursements made by the board during the year, which report shall be in duplicate, and after being approved by said board, one of said duplicates shall be filed in the office of the city clerk and one in the office of the city treasurer, and he shall perform such other services as the board shall require. In the absence of the clerk at any meeting held by the board, it shall designate one of its number as clerk pro tem to keep the minutes of said meeting, which minutes shall be delivered to the clerk to be transcribed into the record book of said board. The minutes of said meeting in said record book contained when approved by the board shall be prima facie evidence of the matters and things therein recited in any court of this state. [*Act approved March 7th, 1901, § 1.*] (7th Sess. 73-4.)

3319. *Powers and duties.*—The board of park commissioners shall have the management and control of all parks belonging to the city and of all trees and other plants upon the streets, avenues, boulevards and public places within the city, and the right to designate the character and quality of all trees and plants planted in such parks, streets, avenues, boulevards and public places. Said board of park commissioners shall have the following powers and be charged with the following duties:

1. To lay out, establish, improve and maintain park-ways, drives and walks in the parks of the city and to make plats thereof and to file the same in the office of the city clerk and to determine when and what parks shall be opened to the public.

2. To cultivate, plant, maintain and improve all trees and other plants required to be planted, cultivated and maintained in the parks belonging to the city and in the streets, avenues, boulevards and public places in the city and for that purpose to establish and maintain nurseries for the growth of trees and plants.

3. To make all rules and regulations necessary or convenient to protect and promote the growth of trees and plants in parks, streets, avenues, alleys, boulevards and public places under the care and control of said board, and for the protection of all birds inhabiting, frequenting or nesting in such parks, streets, avenues, boulevards and public places, and all rules and regulations for the use of parks by the public, and to provide penalties for the violation of such rules and regulations which rules and regulations shall have the force of city ordinances and be enforced in like manner as ordinances of the city are enforced.

4. To employ and discharge workmen, laborers, engineers, foresters and others and to fix their compensation, which shall not be less than the union scale of wages in force in each individual city of the first class, and to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon said board by this act, and to pay all obligations authorized to be incurred by the provisions of this act.

5. To lease all lands owned by the city heretofore acquired for parks, whether within or without the city, which in the judgment of the board it shall not be advisable to improve as parks upon such terms and conditions as the board shall deem to be for the best interests of the city, *provided* that such lands shall not be leased for a longer term at any one time than five years, and not for a longer time than one year without the concurrence of two-thirds of the entire board of park commissioners.

6. To raise by taxation such a sum each year as the board shall determine to be necessary to defray the expenses of carrying out the work of said board not exceeding, however, in any

one year a sum equal to an assessment of one-tenth of one per cent. upon all of the taxable property of the city as the same appears by the assessment roll of the county for said year.

7. All other powers incident to the duties enjoined by the provisions of this act. [*Act approved March 7th, 1901, § 2.*] (*7th Sess. 75-6.*)

3320. *Funds, how disbursed.*—All moneys paid out by the park commissioners under the provisions of this act shall be by warrant drawn upon the city treasurer which shall be signed by the city clerk and countersigned by the president or in his absence by the vice-president of the board of park commissioners. All moneys raised by tax for park purposes or received by the board of park commissioners for the sale of hay, trees, plants, or from the leasing of park lands, or from any other source shall be paid into the city treasury, and the city treasurer shall keep all such moneys in a separate fund to be known as the park fund. Such board shall have no power to incur liability on behalf of the city in excess of moneys on hand in, or taxes actually levied for, said park fund. [*Act approved March 7th, 1901, § 3.*] (*7th Sess. 76.*)

3321. *Meetings. General regulations.*—Said board of park commissioners shall hold an annual meeting on the first Monday of May, and a meeting at least once in each month in each year at such times as the board shall by rule prescribe. Special meetings may also be held at the call of the president or in his absence the vice-president upon giving to each member of said board at least twenty-four hours notice in writing of the time and place of holding such meeting. A majority of the entire board shall be necessary to constitute a quorum for the transaction of the business of said board. No park commissioner shall receive compensation for his services rendered under the provisions of this act, but the actual and necessary expense incurred by any member of the board while acting under the orders of the board in the transaction of any business in its behalf may be paid upon being allowed and audited by the board. No park commissioner shall be interested in any contract made by the board or by its authority or in the furnishing of any supplies for the use of the board. Any park commissioner who shall refuse or neglect for the period of three consecutive months to attend the meetings of said board without leave of absence from said board or who shall fail for the period of twenty days from and after his appointment to qualify as in this act provided, shall be deemed to have vacated his office, and thereupon his successor may be appointed. All contracts made by said board shall be in the name of the city and shall be signed by the city clerk and by the president, or in his absence by the vice-president, of said board. [*Act approved March 7th, 1901, § 4.*] (*7th Sess. 77.*)

3322. *Tax levy for park purposes.*—The board of park commissioners shall in each year on or before the day when the city council shall be required by law to make the annual levy for taxes for city purposes, make an estimate of the amount of money necessary to be raised for park purposes for said year to carry out the purposes of this act, and shall certify the amount of such estimate to the city council which certificate shall be in writing and shall be signed by the president, or in his absence by the vice-president, of said board of park commissioners and by the city clerk and shall be filed in the office of the city clerk, and thereupon it shall be the duty of the city council to cause the sum stated in said certificate to be included in the assessment of city taxes for said year and such sum shall be levied and collected in the same manner as other city taxes are levied and collected, and when collected shall be kept in the park fund to be paid out upon the warrants of the board of park commissioners and not otherwise. [*Act approved March 7th, 1901, § 5.*] (*7th Sess. 77-8.*)

3323. *Allowance of claims.*—Said board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which shall have been incurred by said board; but no claim shall be audited or paid until an itemized account of such claim in writing verified by the oath of the claimant or his or its authorized agent shall have been filed in the office of the clerk of said board; *provided* that no order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of Twenty-five Dollars, or authorizing the making of any contract, shall be passed or adopted except by a ye a and nay vote, which vote shall be recorded in full in the minutes by the clerk. [*Act approved March 7th, 1901, § 6.*] (*7th Sess. 78.*)

3324. *Appointment of board.*—The governor of the state shall as soon after the passage of this act as may be and on or before the first day of May, 1901, nominate and appoint six residents of each of the cities of the first class having the qualifications in this act provided who shall serve as park commissioners for said cities respectively, three of whom shall hold their offices for the period of one year from and after May 1, 1901, and until their successors are appointed and qualified and three for the period of two years from and after the first day of May, 1901, and until their successors are appointed and qualified, and annually thereafter on or before the first day of May shall appoint for each of said cities three park commissioners having the qualifications as aforesaid whose term of office shall each be two years and until their successors are appointed and qualified. *Provided, however,* that the first appointees of said Board of Park Commissioners shall not be appointed until a petition requesting

such appointments, and signed by at least two hundred resident free-holders of the city for which such appointments are to be made, shall be presented to the Governor. When a vacancy shall occur in the office of park commissioner, the governor upon being notified of such vacancy by a certificate signed by the president and clerk of said board, shall nominate and appoint a successor for the unexpired term of the person whose office has become vacant. [*Act approved March 7th, 1901, § 7.*] (7th Sess. 78-9.)

ARTICLE VIII.

FIRE DEPARTMENT.

Section 3325. May appoint chief engineer, etc., of fire department.

“ 3326. *Council may establish fire department.*

“ 3327. *Of what department may consist.*

“ 3328. *Powers of mayor to suspend firemen.*

“ 3329. *Reduction of force in reverse order of appointment.*

“ 3330. *Qualification of firemen.*

“ 3331. *Duties of chief and assistant chief of fire department.*

“ 3332. *Act applicable to existing departments.*

“ 3333. *Volunteer companies not affected.*

“ 3334. *Fire department; disability fund.*

“ 3335. *Source of fund.*

“ 3336. *Tax levy for fund.*

“ 3337. *Trustees of fund.*

“ 3338. *Duties of trustees.*

“ 3339. *Use of fund.*

“ 3340. *Benefits; how allowed.*

“ 3341. *Embezzlement of fund.*

3325. (§ 4816.) *May appoint chief engineer, etc., of fire department.*—The council of any city or town where there is no paid fire department may appoint a chief engineer of the fire department, to manage and control the fire engines and apparatus furnished by the city or town for the extinguishing and the prevention of fires, to superintend and direct all fire companies, and to examine and inspect all buildings, chimneys, flues and boilers, and other things within the city or town, and require the same to be put in a safe condition or removed, if liable to cause fire. In case a paid fire department is established in any city or town, the council may by ordinance provide for the maintenance of the same and the employment of the officers and employes thereof.

3326. *Council may establish fire department.*—The Council of Cities and Towns shall have power to establish a Fire Depart-

ment and prescribe and regulate its duties, to maintain a fire-alarm telegraph, to erect engine, hose and hook-and-ladder houses, and provide engines and other implements and apparatus for the extinguishing of fire. [*Act approved March 7th, 1899, § 1.*] (6th Sess. 73.)

3327. *Of what department may consist.*—Such Fire Department, when established, by the Council, shall consist of: One Chief of the Fire Department, as many Assistant Chiefs of the Fire Department and such number of firemen as the Council may from time to time provide. The compensation of the Chief of the Fire Department and Assistant Chief of the Fire Department and firemen in cities and towns where the Council shall establish a Paid Fire Department, shall be fixed by ordinance. The Mayor shall nominate and with the consent of the Council appoint the Chief of the Fire Department, the Assistant Chief of the Fire Department and all firemen, and such appointment shall be first made for a probationary term of six months, and thereafter the Mayor may nominate and with the consent of the Council appoint such Chief and Assistant Chief of the Fire Department and firemen who shall thereafter hold their appointment during good behavior, and having the physical ability to perform their duties. The Chief of the Fire Department and the Assistant Chief of the Fire Department and the firemen shall not be deemed officers of the Municipal Corporation in which such Fire Department is established. [*Act approved March 7th, 1899, § 2.*] (6th Sess. 73-4.)

3328. *Powers of mayor to suspend firemen.*—The Mayor may suspend the Chief and Assistant or any fireman of the Fire Department for neglect of duty or a violation of any of the rules and regulations of the Fire Department; the Chief of the Fire Department may suspend the Assistant Chief of the Fire Department or any fireman and the Assistant Chief of the Fire Department may suspend any fireman for a like cause. In all cases of suspension the person suspended must be furnished with a copy of the charge against him in writing, setting forth reasons for the suspension and such charges must be presented to the next meeting of the Council and a hearing had thereon, when the suspended member of the Fire Department may appear in person or by counsel and make his defense to said charges; if such charges are found proven by the Council, the Council by a vote of a majority of the whole Council, may impose such penalty as it shall determine the offense warrants, either in the continuation of the suspension for a time limited, or in the removal of the suspended person from the Fire Department; should the charges be not presented to the next meeting of the Council after the suspension, or should the charges be found not proven by the Council, the suspended person shall be re-instated and be en-

titled to his usual compensation for the time so suspended. [*Act approved March 7th, 1899, § 3.*] (6th Sess. 74.)

3329. *Reduction of force in reverse order of appointment.*—Should the Council at any time reduce the number of firemen in the Fire Department, those most recently appointed shall be selected for retirement from the Fire Department, and the City or Town Clerk shall keep a list of such retired firemen, and should the number of firemen be again increased by the Council, the men on said list shall be called into service, the longest service firemen being first selected for service in the Fire Department. [*Act approved March 7th, 1899, § 4.*] (6th Sess. 74.)

3330. *Qualification of firemen.*—The qualifications of firemen shall be that they shall be qualified voters of the City or Town, and not over forty-five years of age, and if there should be any firemen in the existing Fire Department in Cities and Towns whose age is forty-five years or over the same be retired from service, at the time of their appointment, and shall have passed a physical examination by a practicing physician duly authorized to practice in this State, which examination shall be in writing and filed with the City or Town Clerk. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty. [*Act approved March 7th, 1899, § 5.*] (6th Sess. 74-5.)

3331. *Duties of chief and assistant chief of fire department.*—The Chief of the Fire Department shall have sole command and control over all persons connected with the Fire Department of the City or Town and shall possess full power and authority over its organization, government and discipline, and to that end may from time to time establish such disciplinary rules and regulations as he may deem advisable, subject to the approval of the City or Town Council; he shall have charge of and be responsible for the engines and other apparatus, the property of the Town or City furnished the Fire Department, and see that they are at all times ready for use in the extinguishing of fires. The Assistant Chief of the Fire Department shall aid the Chief in the work of the department, and in his absence shall perform his duties. [*Act approved March 7th, 1899, § 6.*] (6th Sess. 75.)

3332. *Act applicable to existing departments.*—In Cities and Towns where Fire Departments are now established, organized and existing as provided in this act, the same shall be deemed to be established hereunder. [*Act approved March 7th, 1899, § 7.*] (6th Sess. 75.)

3333. *Volunteer companies not affected.*—All acts and parts of acts in conflict herewith are hereby repealed, *Provided*, that nothing herein contained shall be held or construed to affect any fire organization known as Volunteer Fire Company. [*Act approved March 7th, 1899, § 10.*] (6th Sess. 76.)

3334. *Fire department; disability fund.*—There shall be created and established in each city and town in the State of Montana where there is an established fire department, a fund in the city or town treasury, to be known as the "Disability Fund," of the fire department of said city or town. [Act approved March 4, 1907, § 1.] (10th Sess. Chap. 71.)

3335. *Source of fund.*—The Disability Fund of the fire department of such city or town shall consist of such sums of money as may be derived from the levy of an annual tax for that purpose, levied by such city or town council as hereinafter provided, and donations to the fire department from any source, in land, money, and other valuable gifts. No member of any such fire department of a city or town shall receive any gift of money or other valuable thing for his services other than the salary fixed by ordinance; and in the event of any member of such fire department shall receive any gift of money or other valuable thing, the same shall be turned into the said Disability Fund; *provided and excepting, however,* that any member of such fire department may receive as a gift any medal, badge, emblem, or other article of adornment, in recognition of individual bravery or heroic action in the discharge of his duties as such fireman. [Act approved March 4, 1907, § 2.] (10th Sess. Chap. 71.)

3336. *Tax levy for fund.*—For the purpose of maintaining said Disability Fund, the city or town council may, in the manner provided for by law, and at the time of the levy of the annual tax, levy a special tax of not to exceed one-tenth of one mill on the dollar upon the assessed valuation of all taxable property within the limits of the said city or town, which said tax shall be collected as other taxes, and when so collected shall be paid into the Disability Fund of said fire department. [Act approved March 4, 1907, § 3.] (10th Sess. Chap. 71.)

3337. *Trustees of fund.*—A board of trustees of said Disability Fund shall be created to consist of the mayor, clerk and attorney of said city or town, the chief of such fire department in said city or town, and one member of the fire department, who shall be selected by a majority of the members of said fire department between the first and tenth day of May of each year in which said city or town shall elect a mayor, and shall hold his position as such trustee during the administration of the then incumbent mayor. [Act approved March 4, 1907, § 4.] (10th Sess. Chap. 71.)

3338. *Duties of trustees.*—The board of trustees of the said Disability Fund shall audit the same from time to time, at least twice during each fiscal year, and report the condition of the said fund annually to the city or town council, on or before the first day of April of each year. No payments shall be made therefrom except upon the order of the council upon the written recom-

mentation of a majority of the board of trustees. The City or Town Council may provide for the investment of all or any part of said funds in Bonds of the United States or of the State of Montana, or of the particular city or town in which such fund exists and for the sale of such bonds when desirable. All such bonds shall be deemed part of the City Treasury, and the Treasurer shall be responsible therefor in the same manner as for the moneys of the fund. [*Act approved March 4, 1907, § 5.*] (*10th Sess. Chap. 71.*)

3339. *Use of fund.*—Said Fund shall not be used for any purpose whatsoever, other than the relief of firemen of such city or town, who may be disabled in the line of duty in such fire department; nor shall this Act render the City or Town liable for such disability, but such fund shall be and remain in such City or Town Treasury, to be drawn upon by the warrant of the Mayor, countersigned by the Clerk, in such sum as may be allowed under the provisions of § 3340 (7) of this Act, for the relief of disabled firemen, until such fund be exhausted, when no further warrant thereon shall be issued. [*Act approved March 4, 1907, § 62*] (*10th Sess. Chap. 71.*)

3340. *Benefits; how allowed.*—Benefits shall only be allowed on the recommendation of the Board of Trustees or the majority thereof, approved by the City or Town Council. Whenever the Board of Trustees shall recommend to the Council the payment of any benefit to any member of such fire department, disabled in the line of duty, the recommendation shall be in writing, stating the name of the beneficiary, the character of the disability, when, where and how received, and the amount to be paid to such beneficiary. The Benefit paid to any member of such fire department who may be disabled in the line of duty shall be at least a sum equal in amount to the loss of salary and reasonable cost of medicine or medical services incurred by any such member on account of said disability, and in the event of any member of said fire department becoming disabled or maimed for life, or shall suffer death in the line of said duty, the Board of Trustees may, subject to the approval of the Council in each instance, make a suitable allowance to the said member or his heirs. It shall be the duty of the City or Town Council to provide by ordinance, a scale of maximum allowances before any benefit can be allowed, and the same shall not be exceeded by the Board. [*Act approved March 4, 1907, § 7.*] (*10th Sess. Chap. 71.*)

3341. *Embezzlement of fund.*—Any person who shall embezzle any of the moneys or other valuable thing belonging to the Disability Fund of the fire department of any city or town, or who shall take part in or aid in any scheme whereby the said fund may be defrauded, shall be guilty of a felony, and on con-

viction thereof, shall be punished by imprisonment in the state prison for not less than one nor more than ten years. [*Act approved March 4, 1907, § 8.*] (*10th Sess. Chap. 71.*)

ARTICLE IX.

TAXATION. LICENSES.

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|---------|-------|--|
| Section | 3342. | <i>Annual tax not to exceed a certain sum.</i> |
| " | 3343. | <i>Special taxes and assessments.</i> |
| " | 3344. | <i>Taxes in cities which have exceeded the constitutional limit of indebtedness.</i> |
| " | 3345. | <i>City authorized to levy special taxes.</i> |
| " | 3346. | <i>Annual tax, equalization and collection.</i> |
| " | 3347. | <i>Levy, etc., to be made under this article.</i> |
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| " | 3350. | <i>County assessor must pay over taxes collected.</i> |
| " | 3351. | <i>Equalization of taxes.</i> |
| " | 3352. | <i>Affidavit of aggrieved party.</i> |
| " | 3353. | <i>Preparation of assessment book.</i> |
| " | 3354. | <i>Book to be furnished by city.</i> |
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| " | 3356. | <i>Collection of taxes. Delinquent taxes.</i> |
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| " | 3358. | <i>Annual tax levy.</i> |
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| " | 3361. | <i>Road poll tax.</i> |
| " | 3362. | <i>List of persons liable for poll tax.</i> |
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| " | 3364. | <i>Poll tax, how expended.</i> |
| " | 3365. | <i>Work on the streets, etc.</i> |
| " | 3366. | <i>License may be levied.</i> |

3342. (§ 4814.) *Annual tax not to exceed a certain sum.*—The amount of taxes to be assessed and levied for general municipal or administrative purposes must not exceed one per centum on the assessed value of the taxable property of the city or town, and the council may distribute the money collected into such funds as are prescribed by ordinance.

3343. (§ 4815.) *Special taxes and assessments.*—The council may also assess and levy the special taxes or assessments provided for in this title.

3344. *Taxes in cities which have exceeded the constitutional limit of indebtedness.*—All taxes heretofore levied and collected or to be collected for municipal and administrative purposes by any city, the indebtedness of which equals or exceeds the limit

provided in Section 6 of Article XIII of the Constitution, may be used in payment of current expenses incurred during the fiscal year for which said taxes were levied the same as though a special levy had been made for each of said purposes. And the council of any such city is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose and such expenses shall be payable out of such fund and not otherwise, *provided*, that the aggregate of all taxes authorized for general municipal and administrative purposes, shall not exceed one (1) per cent annually upon the assessed value of all taxable property in such city or town. [*Act approved March 6, 1907, § 1.*] (*10th Sess. Chap. 106.*)

3345. *City authorized to levy special taxes.*—That hereafter any city, the indebtedness of which equals or exceeds said limit, shall be authorized to levy and collect special taxes for municipal and administrative purposes, and the city council in making such levy shall designate the amount thereof for each of said purposes, and each tax, when collected, shall constitute a fund out of which the expenses incurred for the purpose for which such tax was levied shall be paid. The expenses incurred for any such purpose shall be paid out of the fund so to be provided therefor, and not otherwise. [*Act approved February 24th, 1903, § 2.*] (*8th Sess. Chap. 21.*)

3346. (§ 4860.) *Annual tax, equalization and collection.*—The council has power to levy, collect and equalize annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization and collection of the same.

Town v. Pierce. 21 Mont. 130; 53 Pac. 103. Under section 4860 and 4872 of this code, a town council has power to levy taxes and such taxes levied for street purposes cannot be worked out by taxpayers, if they so elect.

3347. (§ 4861.) *Levy, etc., to be made under this article.*—Until the passage of such ordinance the levy, assessment, equalization and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this article.

3348. (§ 4862.) *Basis of taxation.*—The assessment made by the county assessor for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

State v. Johnson, 16 Mont. 570; 41 Pac. 706. Under sections 4862 and 4872 of this code, the assessment of property of a city is not completed until the date of the resolution of the city council fixing and levying the amount of the taxes to be levied and assessed for such year.

3349. (§ 4863.) *Duty of county assessor.*—It is the duty of the county assessor, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in the cities and towns within the county.

3350. (§ 4864.) *County assessor must pay over taxes collected.*—The county assessor must pay over to the city or town treasurer all city or town taxes on personal property collected by him, taking a receipt in duplicate therefor, one of which must be filed with the city or town clerk and the other with the county clerk.

3351. (§ 4865.) *Equalization of taxes.*—The equalization of assessments of property made by the county board of equalization applies to the assessment of property in any city or town, and must be taken as the equalization thereof. But the council may at any time after the adjournment of said board, upon good cause shown, reduce the city or town taxes or penalties thereon as is just and equitable, or order any tax that has been improperly assessed or paid by mistake, to be refunded.

3352. (§ 4866.) *Affidavit of aggrieved party.*—The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

3353. *Preparation of assessment book.*—It is the duty of the county clerk on or before the first Monday in October in each year to make a duplicate of the corrected assessment book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled “The Duplicate Assessment Book for the City of———,” and must contain a copy of the “Corrected Assessment Book” of the county as far as the same refers to city property. [Act approved March 3rd, 1897, § 1.] (5th Sess. 223.)

State v. Weston, 29 Mont. 126; 74 Pac. 415. It is the duty of the county clerk to deliver to the city treasurer the duplicate assessment book required by this act at the same time the original or duplicate is delivered to the county treasurer.

3354. *Book to be furnished by city.*—Such duplicate must be made in a book furnished by the city clerk of each city in the county, and ruled in columns specifying the different funds so that the city treasurer may extend the same and collect the taxes. [Act approved March 3rd, 1897, § 1.] (5th Sess. 223-4.)

3355. *Delivery of book to city clerk.*—The county clerk must deliver such duplicate assessment book to each city treasurer, and take his receipt therefor, having attached thereto the affidavit similar to the one set out in § 2609 (3845) of this Code. [Act approved March 3rd, 1897, § 1.] (5th Sess. 224.)

3356. *Collection of taxes. Delinquent taxes.*—The County Treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the City Treasurer to collect the taxes from such corrected assessment book. The County Treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there be-

ing but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes, with the penalties, interest and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the County Treasurer as provided by Law, shall be credited to the state, county and city, or town, pro rata, in the same proportions as provided in § § 2681 (3925) and 2682 (3926) of the Political Code. [*Act February 20, 1907, § 1.*] (10th Sess. Chap. 24.)

3357. *Duties of city treasurer.*—In case an ordinance of any city of the first or second class shall provide for the collection of its taxes by its treasurer, such treasurer shall have the same power to collect municipal taxes as the county treasurer to collect state and county taxes, and the same right to give notice, add penalties, seize and sell property for delinquent taxes, give deeds to purchasers, and to do everything that a county treasurer might do in the premises, except that he must make settlement with the City Council. [*Act approved March 3rd, 1897, § 1.*] (5th Sess. 224.)

3358. *Annual tax levy.*—The Council must, on or before the first Monday of October of each year, by resolution, determine the amount of city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town for the current fiscal year, and the city clerk must at once certify to the town treasurer a copy of such resolution, and the county treasurer must collect the taxes as in this Article provided; *provided*, that in cities where the council has provided by ordinance for the collection of their taxes by the city treasurer, the city clerk must certify a copy of such resolution to the city treasurer. [*Act approved March 3rd, 1897, § 1.*] (5th Sess. 224.)

3359. *Fiscal year.*—The fiscal year of cities and towns begins on the first Monday of May in each year. [*Act approved March 3rd, 1897, § 1.*] (5th Sess. 224.)

3360. (§ 4874.) *Annual appropriation, when and how made.*—The council must, in the last quarter in each fiscal year prior to the annual election, pass an ordinance to be known and termed the “Annual appropriation for the city of ———, or town ———, for the year 18—,” in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for the ensuing fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid each officer of the city or town. [*Act approved March 13, 1895.*]

State v. Helena, 24 Mont. 537; 63 Pac. 105. An appropriation by a city under this section to pay for water furnished under a contract, which is void, does not make the city liable therefor.

3361. (§ 4875.) *Road poll tax.*—All able-bodied male inhabitants of a city or town, between the ages of twenty-one and forty-five years, must pay an annual road poll tax not exceeding three dollars.

Snook v. Anaconda, 26 Mont. 136; 66 Pac. 757.

3362. *List of persons liable for poll tax.*—The city clerk must make a list of all persons liable for such tax, and present the same to the council for inspection and correction at a regular or special meeting to be held not later than the third Monday of May. On or before the first regular meeting in June the council must direct a copy of such list, as corrected, certified by the clerk, to be delivered to the city treasurer, and the city treasurer must forthwith collect such taxes from the persons named in the list, and from such other persons liable for the same as he may add thereto, *provided*, that any person who is assessed for a property tax in the city may pay such poll tax at the time he pays his general tax, and in such case the poll tax shall be added upon the assessment list to other taxes of persons liable therefor paying taxes upon real and personal property, by the county clerk upon a list of the names of persons liable for the same being certified to by the city clerk. [*Act approved March 3rd, 1897.*] (5th Sess. 224-5.)

3363. *Duties of city clerk and treasurer.*—The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll tax provided for in Chapter X, Title XII, Part III., of this Code, Sections 2590 (3960) to 2612 (3982), inclusive. [*Act approved March 3rd, 1897.*] (5th Sess. 225.)

3364. (§ 4878.) *Poll tax, how expended.*—The money so collected must be expended for street purposes in the city or town. No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county.

Snook v. Anaconda, 26 Mont. 136; 66 Pac. 757.

3365. (§ 4879.) *Work on the streets, etc.*—The council has power to order any work provided in this title to be done upon the streets, alleys or public places of a city or town.

Snook v. Anaconda, 26 Mont. 136; 66 Pac. 757.

3366. (§ 4900.) *License tax may be levied.*—The council may by ordinance, license all industries, pursuits, professions and occupations, as provided in subdivision 3, of § 3259 (4800), article IV., of this chapter, and the city treasurer must collect the same in the manner and at the time prescribed by ordinance. The city clerk must issue such licenses.

ARTICLE X.

ASSESSMENTS FOR SPECIAL IMPROVEMENTS.

Section 3367. *Special improvements. Powers of council.*

“ 3368. *Connections with water and gas pipes.*

“ 3369. *Resolution of intention.*

“ 3370. *Notice of resolution. Objections.*

“ 3371. *Sewer systems.*

“ 3372. *Public sewers.*

“ 3373. *District sewers.*

- Section 3374. *Size and material. Repairs.*
" 3375. *Private sewers.*
" 3376. *Bridges.*
" 3377. *Board of public works.*
" 3378. *Same. Rules. Salary.*
" 3379. *Assessments to defray cost of opening or widening streets.*
" 3380. *Assessment for cost of obtaining property to open street.*
" 3381. *Assessment for grading, macadamizing or paving alley.*
" 3382. *Assessment for district sewers.*
" 3383. *Same.*
" 3384. *District trunk sewer.*
" 3385. *Assessment for grading street.*
" 3386. *Assessment for street paving.*
" 3387. *Assessments for curbs, gutters and sidewalks.*
" 3388. *Assessments for changing grade.*
" 3389. *Assessments for miscellaneous improvements.*
" 3390. *Street sprinkling.*
" 3391. *Same. Creation of districts.*
" 3392. *Same. Change of district.*
" 3393. *Assessment to pay for work.*
" 3394. *Same. Ratio of assessment.*
" 3395. *Same. Method of levy of assessment.*
" 3396. *Assessments. Extension of payment. Ordinance.*
" 3397. *Creation of special improvement districts. Maintenance tax.*
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" 3402. *Delinquent assessments.*
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" 3405. *Method not exclusive.*
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" 3407. *Lien of special assessments.*
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" 3410. *Limit of special assessments for opening streets.*
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Section 3416. Special assessments.

" 3417. *Effect of act on existing laws.*

" 3418. *Special improvement districts. Cities may issue warrants or bonds to pay costs of improvements.*

" 3419. *Bonds, how issued; character and form.*

" 3420. *Bonds may be issued in installments as work progresses.*

" 3421. *Registration of bonds.*

" 3422. *Special assessments to raise funds.*

" 3423. *Notice of assessment; redemption.*

" 3424. *Payment of bonds.*

" 3425. *Collection of delinquent assessments. Actions by bond holder.*

" 3426. *Improvements consisting of distinct kinds of work.*

" 3427. *Extent of lien.*

" 3428. *Bonds may be issued in place of warrants heretofore issued.*

" 3429. *Validity of outstanding bonds or warrants not affected by this act.*

3367. *Special improvements. Powers of council.*—The city council or town council of any incorporated city or town may cause any street, avenue, or alley, or any part thereof, to be graded, paved, curbed, or macadamized, and may cause sidewalks, sewers, gutters or other improvements to be made thereon, upon the same being ordered by a majority of all the members of the Council. The Council shall have charge of the building, maintenance and repairs, of all sidewalks of whatever kind or character, and such work may be done by contract, or by the street commissioner, or other authorized officer of the city or town; *provided, however,* that any one, or all kinds of sidewalks shall be built and maintained at the cost of the owners of the property in front of which said sidewalk is built, or to be built. [Act approved March 8th, 1897, § 1.] (5th Sess. 213.)

Snook v. Anaconda, 26 Mont. 134; 66 Pac. 757.

McMillan v. Butte, 30 Mont. 224; 76 Pac. 204. Section 30 of this act is a legislative declaration that all property in the proposed district is benefitted by the improvement to the same extent and is valid.

An alleged protest to street paving filed by abutting owners, stating the reasons why they did not desire the paving done in 1898, and their willingness to have the street paved in 1900,

was not an unqualified protest required by section 31 hereof.

Hensley v. Butte, 33 Mont. 211; 83 Pac. 481. Taxes levied by a city for special improvement purposes are void, where the city council creates an improvement district, notwithstanding owners representing more than one-half of the area of the property to be assessed to defray the cost of such improvement, appear before the council and object to the final adoption of the resolution creating such district.

3368. *Connections with water and gas pipes.*—The City or Town Council shall have power to require connections from gas-pipes, water-pipes, steam heating-pipes and sewers to the curb line

of the adjacent property to be made before the permanent improvement of the streets whereon they are located, and to regulate the making of such connection on the streets already improved, or on unimproved streets, and in case the owners of the property on such streets shall fail to make such connections within the time fixed by the Council, they may cause such connections to be made, and shall assess against the property in front of which said connections are made the entire cost and expense thereof. All assessments levied under the provisions of this Section shall be enforced and collected in the same manner as other special assessments provided for in Article V of this Chapter, and amendments thereof, and all such assessments shall be a lien against the property. [*Act approved March 8th, 1897, § 2.*] (5th Sess. 213.)

3369. *Resolution of intention.*—The City or Town Council is authorized to provide by ordinance a system for doing any or all work, in or upon the streets, highways, or public places of the city or town, and for making thereon street improvements and repairs, and for doing any or all work authorized by this Act, and for the payment of the cost and expenses thereof. In all cases where any part of the expense of any such improvement, except constructing side-walks, gutters, or making necessary repairing, is to be defrayed by special assessment, the council must first adopt a resolution declaring its intention to make such improvement, and fix a time at which objections to the making of such improvements will be considered. [*Act approved March 8th, 1897, § 3.*] (5th Sess. 213.)

3370. *Notice of resolution. Objections.*—The resolution must designate the boundaries of the district to be affected or benefited by said improvement. Upon adopting such resolution, the Council must give notice of such intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or posted for five days in three public places in the city or town, or served upon the owners or agents of the property affected. Such notice must describe the improvements so proposed to be made, and state the estimated cost thereof, and designate the time for such hearing, and shall refer to the resolution entered upon the journal of the council for the description of the boundaries. If, at or before, the time so fixed, written objections to such improvements, signed by the owners or agents of two-thirds of the property to be affected or benefited by said improvements, be filed with the city clerk, the city or town council shall not make such improvements but if objections be not so filed by the owners or agents of two thirds of the property to be affected or benefited, then the council acquires jurisdiction to order the making of the improvements. [*Act approved March 14th, 1901, § 1.*] (7th Sess. 79.)

3371. *Sewer systems.*—A sewer system may be established in a town or city, which may be divided into public, district and private, sewers. [Act approved March 8th, 1897, § 5.] (5th Sess. 214.)

3372. *Public sewers.*—Public sewers may be established and constructed along the principal courses of drainage, at such times to such extent, of such dimensions and material, and under such regulations as may be provided by ordinance, and there may be constructed such branches for sewers already constructed or to be constructed as may be considered expedient. An appropriation must be made to meet the cost of such public sewers from the general or sewer fund of the city or town. [Act approved March 8th, 1897, § 6.] (5th Sess. 214.)

3373. *District sewers.*—District sewers may be established within the limits of districts to be prescribed by ordinance, and so as to connect with the public sewer or some course of drainage. The council may cause sewers to be constructed in any district whenever the owners of one-third of the feet frontage of the real estate within that part of the district affected thereby, petition therefor, or whenever the council by the vote of a majority of its members decide it necessary for sanitary purposes; *provided, however*, that before the council shall formally require the construction of the improvements mentioned in this section, notice shall be given and an opportunity for hearing afforded as provided in § 3370 (4), but after notice, the council, notwithstanding any objection that may be offered, may require the improvement to be made unless the resolution relating thereto be rescinded by the vote of a majority of the members of the council. [Act approved March 14th, 1901, § 2.] (7th Sess. 79-80.)

3374. *Size and material. Repairs.*—The character, dimensions and material, of such sewers must be prescribed. They may be diminished, enlarged or extended by the Council. Repairs and other incidental expenses of the district sewers must be paid out of the general or sewer fund. [Act approved March 8th, 1897, § 8.] (5th Sess. 215.)

3375. *Private sewers.*—Private sewers connecting with the public and district sewers, shall be constructed under such restrictions and regulations as the Council may prescribe by ordinance, but the city or town must be at no expense in constructing, repairing or cleaning of the same, but the same must be done by the owner. [Act approved March 8th, 1897, § 9.] (5th Sess. 215.)

3376. *Bridges.*—The city or town council may construct and maintain bridges across any streams that flow through or penetrate the boundaries of a city or town when the public necessity requires it, and the expense thereof may be paid by special assessment as provided in this Chapter, and amendments thereof, from

the sale of bonds or from the general or street fund, or a part thereof, may be paid by any of the above enumerated methods of defraying cost. [*Act approved March 8th, 1897, § 10.*] (5th Sess. 215.)

3377. *Board of public works.*—Whenever it may so elect, the city council of cities of the first class, may by a vote of two thirds of its members, create a Board of Public Works: Said Board shall consist of three freeholders, not city officials, not more than two of whom shall be of the same political party; they shall be appointed by the mayor and confirmed by the council. [*Act approved March 8th, 1897, § 11.*] (5th Sess. 215.)

3378. *Same. Rules. Salary.*—The City Council, shall by ordinance, formulate rules and regulations to govern said Board and fix the salary or compensation of the same, but no amount greater than One Hundred Dollars shall be paid to any member for one month's services. The Board of Public Works so created, may be abolished at any time upon a vote of two-thirds of all the members of the Council. [*Act approved March 8th, 1897, § 12.*] (5th Sess. 215.)

3379. *Assessments to defray cost of opening or widening streets.*—Whenever it is desired to make a special assessment to defray the cost of obtaining private property for the opening or widening of any street or alley, or for other purposes, or for any of the improvements mentioned in the preceding Section, the city or town council, shall, by resolution, levy and assess a tax upon such property as they shall determine is specially benefited thereby, making therein a list thereof, in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution signed by the mayor and clerk shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvement is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution shall be heard by the Council, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed the Council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may, by resolution, modify such assessment in whole or any part thereof. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage, and within five days after the receipt thereof, the city treasurer must, by written notice, mailed or otherwise delivered, notify each owner of the property assessed, of the amount of said assessment, specifying in the notice the pur-

pose for which the levy was made, and the tax against each lot or parcel of land, and the date when the same becomes delinquent. [*Act approved March 8th, 1897, § 13.*] (5th Sess. 215-6.)

3380. *Assessment for cost of obtaining property to open street.* To defray the cost and expense of obtaining private property for the opening or widening of any street, avenue or alley, the city or town council shall assess not less than twenty-five per cent thereof, and any part not to exceed seventy-five per cent thereof, as a special tax against the property, distributing such special tax upon such property in proportion to the benefits and pay the remainder of said cost and expense from the general or street fund of the city or town; *provided, however*, that if the cost does not exceed Five Hundred Dollars the city or town council may pay the entire cost from the general or street fund. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 123.)

3381. *Assessment for grading, macadamizing or paving alley.*—To defray the cost and expense of grading, macadamizing, paving or otherwise improving any alley, except the building of a sewer, the city or town council shall assess the entire cost thereof, to the property abutting said alley in proportion to the number of linear feet bordering thereon. [*Act approved March 7, 1903, § 2.*] (8th Sess. Chap. 123.)

3382. *Assessment for district sewers.*—To defray the cost and expense of constructing district sewers, the city or town council shall assess the entire cost of said work against the property which is specially benefitted thereby, in proportion to the linear feet bordering said sewer; *provided, however*, that when a lot or tract of land situated upon a street or alley corner has been assessed, or is about to be assessed for the cost of sewer construction upon one side thereof, it shall not be assessed at any future time for the entire frontage upon the other street or alley, but shall have deducted therefrom as many linear feet as may have been assessed upon the other side, up to, but not to exceed fifty feet. [*Act approved March 8th, 1897, § 16.*] (5th Sess. 216.)

3383. *Same.*—It is further provided, that when a public or main sewer serves as a district sewer, the city or town council may assess the property bordering said public sewer, either at the time of its construction, or at any future time, for an amount equal to the estimated cost of the district sewer, capable of accommodating said property. *Act approved March 8th, 1897, § 17.*] (5th Sess. 217.)

3384. *District trunk sewer.*—Whenever a sewer serves as an outlet for the district or lateral sewers which drain a limited area, but which cannot justly be considered a public sewer benefiting the entire city or town, its cost, or any part thereof may be defrayed by special assessment levied against all the property which it serves as a drain, each lot or parcel of land benefitted

thereby to be assessed in the proportion which its area bears to the area of all the territory affected or benefited thereby, exclusive of streets, alleys and public places. Said levy may be made at the time of the construction of said sewer or at any future time. [*Act approved March 8th, 1897, § 18.*] (5th Sess. 217.)

3385. *Assessment for grading street.*—To defray the cost of grading any street, the city or town council shall assess not less than twenty-five per cent thereof, and any part not to exceed seventy-five per cent thereof, as a special tax against the property, which it may determine is specially benefited thereby, and pay the remainder of said cost and expense from the general or street fund of the city or town. [*Act approved March 8th, 1897, § 19.*] (5th Sess. 217.)

3386. *Assessments for street paving.*—To defray the cost of paving, macadamizing or similarly improving any street, together with the cost of catch basins, storm drains to some main line of drainage, and appurtenances thereto, the city or town council shall assess the entire cost thereof, excepting the cost of paving and cross-walks, at the street and alley intersections and any amount which may be payable by any person or corporation occupying any part of any street under a franchise, as a special tax against the property bordering or abutting said streets, in proportion to the linear feet abutting or bordering the same. [*Act approved March 8th, 1897, § 20.*] (5th Sess. 217.)

3387. *Assessments for curbs, gutters and sidewalks.*—To defray the cost of curbing, guttering and constructing side-walks, and keeping the same in repair, the city or town council shall assess the entire cost thereof to the property in front of which said improvement is made. The property occupying a street corner to be assessed for that part of said improvement which is within the street intersection. [*Act approved March 8th, 1897, § 21.*] (5th Sess. 217.)

3388. *Assessments for changing grade.*—To defray the cost and expense of changing the established grade of any street, avenue or alley, the council may assess any part of such cost and expense, not exceeding seventy-five per cent. thereof, as a special tax against the property which it may determine is specifically benefited thereby, or they may pay the whole cost from the general or street fund of the city or town. [*Act approved March 8th, 1897, § 22.*] (5th Sess. 217-8.)

3389. *Assessments for miscellaneous improvements.*—To defray the cost of any improvement not specifically mentioned in this Article, the Council may, by ordinance, establish rules for doing said work, and may assess any part, or the whole cost of said work to the property which it may determine is specifically benefited thereby. [*Act approved March 8th, 1897, § 23.*] (5th Sess. 218.)

3390. *Street sprinkling.*—Whenever the Council of any city or town desires to sprinkle the whole or any part of their city or town, as provided in this Chapter, it shall provide by ordinance a method of doing said work, and paying for the same under the following restrictions and regulations. [*Act approved March 8th, 1897, § 24.*] (5th Sess. 218.)

3391. *Same. Creation of districts.*—A resolution dividing the whole, or any part of their city or town into sprinkling districts, to be known and designated by number, shall be passed; said resolution shall plainly define the boundaries of the several districts, or enumerate the streets, alleys, and public places or any part thereof, constituting the different districts. [*Act approved March 8th, 1897, § 25.*] (5th Sess. 218.)

3392. *Same. Change of district.*—When once defined, sprinkling districts shall not be changed during the same calendar year, but may be changed by resolution the following year, or any year thereafter. [*Act approved March 8th, 1897, § 26.*] (5th Sess. 218.)

3393. *Assessment to pay for work.*—The sprinkling in districts so established may be done by contract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate as near as practicable, the cost of sprinkling in such districts so established, for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to not less than seventy-five per cent of the entire cost of said work, exclusive of the cost of sprinkling parks and public places. [*Act approved March 7, 1903, § 3.*] (8th Sess. Chap. 123.)

3394. *Same. Ratio of assessment.*—The rate of taxation in each sprinkling district shall be determined by dividing the total cost of sprinkling the same, by the total number of linear feet of property in front of, or bordering which sprinkling has been done, and each lot or parcel of land shall be assessed for as many linear feet as border on any street that has been sprinkled. [*Act approved March 8th, 1897, § 28.*] (5th Sess. 218.)

3395. *Same. Method of levy of assessment.*—The resolution levying the assessment to defray the cost of sprinkling, shall contain a list in which shall be described the lot or parcel of land assessed, with the name of the owner thereof, if known, and the amount levied thereon set opposite; such resolution shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying special assessment to defray the cost of sprinkling in the several districts, is on file in his office and subject to inspection for a period of five days, shall be published at least once in a newspaper published in a city

or town; such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the Council, and the time for such hearing shall be not less than five days after the publication of such notice; at the time so set, the council shall meet at their regular place of meeting and hear all objections which may be made to such assessment, or any part thereof, and may adjourn from time to time, for that purpose, and may, by resolution, modify such assessment in whole or in part. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer on or before the first Monday in October, and such assessment shall be placed upon the tax roll, and collected in the same manner as other taxes. [*Act approved March 8th, 1897, § 29.*] (5th Sess. 218-9.)

3396. *Assessments. Extension of payments. Ordinance.*—Whenever the Council desires to make improvements and extend the payments for the same over a period of three years, as provided in this Chapter, and amendments thereof, it shall enact by ordinance that the entire expense, (less any amount which may be payable by any person or corporation occupying any part of any street under a franchise), of all improvements within each Special Improvement District thus created, including cost of street and alley intersections, shall be paid by the entire district, each lot or parcel of land within such district to be assessed for that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, alleys and public places. [*Act approved March 8th, 1897, § 30.*] (5th Sess. 219.)

McMillan v. Butte, 30 Mont. 220; 76 Pac. 203.

3397. *Creation of special improvement districts. Maintenance tax.*—Whenever it is desired to create a Special Improvement District for the purpose of grading, paving, curbing, macadamizing, planting trees, constructing grass plots and sowing grass seed thereon, constructing sidewalks, sewers, and gutters, in any street, avenue or alley, or making any one or more of the improvements herein mentioned, or other public improvements of a similar nature as provided in this Chapter, and amendments thereof, the payments of assessments for which are to be made in installments, and are to extend over a period of three years, and the cost of which Special Improvement is to be paid for by Special Improvement Warrants, the council shall by resolution designate the number of such district, describe the boundaries thereof, and state therein the character of the improvement or improvements which are to be made, an approximate estimate of the cost thereof, and the time when the council will hear objections to its final adoption; such resolution shall be published in a daily newspaper, published in the city or town, for at least five days, or in a weekly paper in one issue, not less than five days before the date set for hearing objections to the final adoption of the same. Any per-

son or persons who are owners or agents of any lot or parcel of land within such improvement district shall have the right to appear at said meeting either in person or by counsel and show cause, if any there be, why the improvements mentioned therein shall not be made; if at such meeting, objections are made to the making of such improvements, by owners or agents representing more than one-half in area of all the property which would be assessed to defray the cost of said improvement, the improvements shall not be made at that time, and at no time during a period of six months thereafter, but after the expiration of six months, a resolution providing for the same or similar improvements, covering the same territory may be considered after giving the same notice and taking the same proceedings as provided for in the consideration of the original resolution. If the owners or agents of property to the extent herein mentioned fail to make objections, a majority of all the members of the council voting in the affirmative will finally adopt the said resolution. Where trees have been planted, grass plots constructed, and grass sown thereon, or any one or more of said improvements have been made in a Special Improvement District, created by virtue of this Act, it is hereby made the duty of the council of said city or town to cause said trees and grass to be watered, the grass cut, and trees trimmed, and to otherwise maintain and preserve said improvements, as the council shall deem suitable and proper, and the whole cost of so maintaining said improvements in any Improvement District shall be paid by the entire district, each lot or parcel of land within said district to be assessed for that part of the whole cost of maintaining, which its area bears to the area of the entire district, exclusive of streets, alleys and public places. The maintaining said improvements within the several districts tract, or by forces employed by the city or town, or by both, in such manner as the council may elect, and it shall be the duty of said council to estimate as near as practicable the cost of maintaining the improvements in such district so created, for the season, and before the first Monday in November of each year they shall pass and finally adopt a resolution levying and assessing all the property within the several districts with an amount equal to the whole cost of maintaining said improvements within the several districts and in the manner as hereinabove provided. Said resolution levying assessments to defray the maintenance of said improvements shall be in every manner prepared and certified to the same as the original resolution levying the assessments for the making of said improvements, and the money collected therefor shall be paid into a fund known as "Special Improvement District No. — Maintenance Fund," the number of which shall correspond with the number of the Special Improvement District in which the Tax is levied; *provided, however*, that the council shall have the power

of not more than once in a year, to change, by resolution, the boundaries of any maintenance district, as hereby established when, in their judgment, the change will decrease the cost of maintenance in the district or districts to be affected. Any special assessment made and levied to defray the cost of maintaining said improvements, together with all costs and penalties, shall constitute a lien upon and against the property upon which said assessment is made and levied, from and after the date of the final passage of said resolution, which lien may be enforced as provided in § 3407 (41) of this Act." [Act approved March 7, 1903. § 4.] (8th Sess. Chap. 123.)

3398. *Special improvement warrants.*—All cost and expense incurred in making improvements in any special improvement district shall be paid by Special Improvement Warrants, drawn against said district fund; and each special Improvement District shall be a special fund; said warrants shall draw simple interest at the rate of six per cent. per annum; such interest from the date of registration of the warrant until the first payment of the assessment for such work becomes delinquent shall be considered a part of the cost of such improvement. [Act approved March 8th, 1897, § 32.] (5th Sess. 220.)

3399. *Levy of tax.*—To defray the cost of making improvements in any special improvement district, the council, shall by resolution, levy and assess a tax upon all property in such district as provided in § 3396 (30) hereof. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, and the date when the same becomes delinquent. [Act approved March 8th, 1897, § 33.] (5th Sess. 220.)

3400. *Same. Resolution and notice.*—Such resolution signed by the mayor and clerk shall be kept on file in the office of the city clerk, and a notice signed by the city clerk stating that the resolution levying the special assessment to defray the cost of such improvement, is on file in his office, subject to inspection for a period of five days, shall be published at least once in a newspaper published in the city or town. Such notice shall state the time and place at which objections to the final adoption of such resolution will be heard by the Council, and the time for such hearing shall not be less than five days after the publication of such notice. At the time so fixed the Council shall meet and hear all such objections, and for that purpose may adjourn from day to day, and may by resolution, modify such assessment in whole or in part thereof. A copy of such resolution, certified by the city clerk, must be delivered to the city treasurer within two days after its passage. [Act approved March 8th, 1897, § 34.] (5th Sess. 220-1.)

3401. *Collection of tax.*—If such resolution is passed, objections heard, and finally disposed of between the first Monday in October and the first day of the following April, the first payment which shall be for one-fourth of the total assessment shall be placed on subsequent tax-rolls and be collected in the same manner as other taxes. If such resolution is passed, objections heard and finally disposed of between the first day of April and the first Monday in October, the first payment which shall be for one-fourth the total assessment shall be placed on the tax-roll and collected in the same manner as other taxes, and all subsequent payments, each of which shall be for one-fourth the total assessment, if unpaid as hereinafter provided, shall be placed on subsequent tax-rolls and similarly collected. [*Act approved March 8th, 1897, § 35..*] (5th Sess. 221.)

3402. *Delinquent assessment.*—When one payment becomes delinquent, the whole tax shall become so, and the property shall be sold the same as other property sold for taxes. [*Act approved March 8th, 1897, § 36.*] (5th Sess. 221.)

3403. *Interest on installments.*—Upon all payments after the first, the city treasurer shall collect simple interest at the rate of six per cent. per annum from the date when the first payment becomes delinquent and shall receive payment in full and give receipts therefor for the entire tax on any property with interest to the date of payment, at any time the same may be tendered by the owner or agent. [*Act approved March 8th, 1897, § 37.*] (5th Sess. 221.)

3404. *Settlement of treasurer.*—The treasurer must make settlement with the Council for the taxes so collected as in other cases. [*Act approved March 8th, 1897, § 38.*] (5th Sess. 221.)

3405. *Method not exclusive.*—Nothing contained in § § 3396 (30) and 3397 (31) hereof shall prevent the Council from making public improvements as provided in other Sections in this Chapter, and amendments thereof. [*Act approved March 8th, 1897, § 39.*] (5th Sess. 221.)

3406. *Cost of assessment rolls.*—The estimated cost of the preparation of assessment rolls, except the cost of labor performed by an officer or regular employee of the city, shall be considered a part of the cost of all work heretofore enumerated. [*Act approved March 8th, 1897, § 40.*] (5th Sess. 221.)

3407. *Lien of special assessment.*—Any special assessment made and levied to defray the cost and expense of any of the work enumerated in this Article, together with any per centages imposed for delinquency, and for cost of collection, constitute a lien upon and against the property upon which such assessment is made and levied, from and after the date of the payment of such assessment, which lien shall be enforced by a summary sale of such property, and the execution and delivery of all necessary

certificates and deeds thereof, under such regulations as may be prescribed by ordinance, or by an action in any court of competent jurisdiction to foreclose such lien, but any property sold to satisfy such liens shall be subject to redemption within the time and in the manner provided, or that may hereafter be provided by law for the redemption of property sold for taxes. [*Act approved March 8th, 1897, § 41.*] (5th Sess. 222.)

3408. *Mistakes in description of property.*—Any mistake in the description of the property or the name of the owner shall not vitiate the liens, unless it is impossible to identify the property from the description. [*Act approved March 8th, 1897, § 42.*] (5th Sess. 222.)

3409. *Errors or omissions in assessment or levy.*—Whenever, by reason of an alleged non-conformity to any law or ordinance, or by reason of any omission or irregularity, any special tax or assessment is either invalid or its validity is questioned, the Council may make all necessary orders and ordinances and may take all necessary steps to correct the same and to re-assess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto; and may re-assess and re-levy the same with the same force and effect as an original levy. Whenever any apportionment or assessment is made and any property is assessed too little or too much, the same may be corrected and re-assessed for such additional amount as may be proper, or the assessment may be reduced even to the extent of refunding the tax collected. Any special tax upon re-assessment, or re-levy, shall, so far as practicable, be levied and collected as the same would have been if the first levy had been enforced; and any provisions of any law or ordinance specifying a time when, or order in which acts shall be done in a proceeding, which may result in a special tax, shall be taken to be subject to the qualifications of this Act. Any and every ordinance, or part thereof, of any Council heretofore passed in substantial conformity with this Section, is hereby legalized. [*Act approved March 8th, 1897, § 43.*] (5th Sess. 222.)

3410. *Limit of special assessment for opening streets.*—Whenever the estimated special tax or assessments for any of the improvements mentioned in the preceding sections, or for the taking of private property for the opening or widening of any street or alley, in the aggregate amount to more than twenty-five per cent of the last assessed value of the property, sought to be assessed, then the council must provide out of the general fund for the payment of the amount in excess of said twenty-five per cent; *provided, however*, that this Section has no application where the improvements are made under the provisions of Section 3396 (30) and 3397 (31) of this Act. [*Act approved March 7, 1903, § 5.*] (8th Sess. Chap. 124.)

3411. *Tax, when payable.*—The tax, as provided in the preceding Sections of this Article, must, unless otherwise distinctly specified, be paid within thirty days after its levy, to the city treasurer, who must give a receipt therefor, and in case of non-payment the treasurer must proceed to collect the same in the same manner as delinquent taxes are collected on other property. If such tax is not paid within said sixty days a penalty of ten per cent. shall be added thereto and collected as a part of the tax. [Act approved March 8th, 1897, § 45.] (5th Sess. 223.)

State v. Weston, 29 Mont. 126; 74 Pac. 415.

3412. *Settlement of treasurer.*—The treasurer must make settlement with the Council for the taxes collected as in other cases. [Act approved March 8th, 1897, § 46.] (5th Sess. 223.)

3413. *Construction of waterworks.*—Whenever the council of any city or town desires to construct or acquire a system of water works or to lay extensions to water mains, it may create a Special Improvement District in the manner hereafter provided, and may enact by ordinance that such portion of the cost of constructing or acquiring such water system or the making of such extensions of water mains within such Special Improvement District thus created as shall be determined by the council, shall be paid by the entire District, each lot or parcel of land within said District to be assessed for that part of the whole cost, which its area bears to the area of the entire District, exclusive of streets, alleys and public places; *provided, however*, that the whole cost so assessed shall at no time exceed the sum of One Dollar and Fifty Cents (\$1.50) per linear foot of the entire length of the water mains, laid in such District. [Act approved February 21, 1905, § 1.] (9th Sess. Chap. 27.)

3414. *Creation of district.*—Whenever it is desired to create a Special Improvement District for the purpose provided in this Act, the council by resolution shall designate the number of such District, the boundaries thereof, and state the approximate estimate of the cost of constructing or acquiring the proposed improvement, also the time when the council will hear objections and the portion of the cost, which it is proposed to have paid by special assessment. Such resolution shall be published in a daily newspaper in the city or town, for at least five days or in a weekly paper in one issue not less than five days before the date set for hearing objections to the final adoption of the same. Any person or persons who are the owners or agents of any lot or parcel of land within such Improvement District shall have the right to appear at said meeting either in person or by counsel and show cause, if any there be, why the improvements mentioned therein shall not be made; if at such meeting, objections are made to the making of such improvement by owners or agents representing more than one-half in area of all the property which

would be assessed to defray the cost of said improvement, the improvement shall not be made at that time, and at no time during a period of six months thereafter, but after the expiration of six months a resolution providing for a similar improvement and covering the same territory may be considered, after giving the same notice and taking the same proceedings as provided for in the consideration of the original resolution. If the owners or agents of property to the extent herein mentioned fail to make objections, a majority of all the members of the council voting in the affirmative will finally adopt the resolution. [*Act approved February 21, 1905, § 2.*] (9th Sess. Chap. 27.)

3415. *Warrants.*—All that portion of the cost and expense incurred in acquiring or constructing such water supply system or making such extension, which the council intends shall be defrayed by special assessments, shall be paid by special improvement warrants, drawn against a Special Improvement District Fund, and each Special Improvement District shall be a special fund. Said warrants shall draw simple interest at the rate of six (6%) per cent per annum from the date of registration, and the said city or town council may provide that said special assessments may be paid in equal annual installments, extending over a period of not less than three nor more than ten years. [*Act approved February 21, 1905, § 3.*] (9th Sess. Chap. 27.)

3416. *Special assessments.*—The council shall levy, assess and collect the special assessments herein provided for in the manner provided for the levy, assessment and collection of other special assessments now provided for under the laws of the State of Montana, and all laws now in force, having a reference to the levy, assessment and collection of special assessments, which may be applicable to the levy, assessment and collection of special assessment herein provided for. [*Act approved February 21, 1905, § 4.*] (9th Sess. Chap. 27.)

3417. *Effect of Act on existing laws.*—Nothing in this Act shall be considered as repealing any law now in existence upon the same subject, but the authority granted herein shall be construed as additional to powers already granted by law to cities and towns. [*Act approved February 21, 1905, § 5.*] (9th Sess. Chap. 27.)

3418. *Special improvement districts. Cities may issue warrants or bonds to pay costs of improvements.*—Whenever the city or town council of any city or town shall cause any street, avenue, alley or other public place in said city or town to be graded, curbed, guttered, macadamized or paved, or to be repaired, re-macadamized, or re-paved, or shall cause to be constructed thereon or thereunder sidewalks or sewers, or shall cause to be planted thereon or alongside any grass-plots, parking or trees, or shall cause to be done any one or more of the said improvements, or

other public improveemnts of a similar character, the expense of which, or any part thereof, is to be defrayed by special assessment against the property embraced in any special improvement district, the city or town council, instead of levying the entire tax or special assessment for such cost and expense at one time, may, in its discretion, provide for the payment of the cost and expense of the said improvement in installments, and, for such installments, may issue special improvement district warrants, and levy and collect assessments to pay the same under the authority and in conformity with the provisions of House Bill No. 204 of the Fifth Legislative Assembly of the State of Montana, approved March 8, 1897, as amended, and may extend the payment of the installments over a period of not to exceed eight years from and after the completion of the improvement, or the city or town council shall have power to pay for the said improvements by the sale, at not less than their face value, of bonds issued against such improvement district, or by the delivery of such bonds in payment for the work done, as hereinafter provided. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 75.*)

3419. *Bonds, how issued; character and form.*—Whenever the city or town council shall deem it advisable to pay for any of the improvements mentioned in Section I hereof in bonds issued pursuant to the provisions hereof, it shall pass an ordinance providing for the issuance of such bonds, which ordinance shall fix the terms and denomination of the said bond. The said bonds shall be payable at such times as the said city or town council may provide, not exceeding ten years from and after a date to be fixed by the said ordinance as the date of issuance thereof, and all bonds issued thereunder shall bear the said date, whether delivered before or after it, and shall bear interest from said date at such rate as may be fixed by the said ordinance, not exceeding eight per centum per annum, payable annually, as evidenced by interest coupons thereunto attached. Said bonds shall be of the denomination fixed by the said ordinance, which shall be either of one hundred dollars or multiples thereof, except that the last bond issue may be for the fractional balance due on the contract, and shall be numbered consecutively from one upwards. The bonds shall bear the signature of the mayor, attested by the city or town clerk under the seal of the city or town, and each coupon shall bear an engraved fac simile signature of said officers. Said bonds shall refer in terms to the improvement to pay for which the same are issued and the ordinance providing for their issue, and shall provide that the principal sum therein named, and the interest thereon, shall be payable out of the fund provided by the creation of the said improvement district, and not otherwise. All bonds issued under the provisions of this Act shall recite said fact, and each and every

provision hereof shall be a part of the contract created by the issuance of said bonds to the same intent and purposes as if set forth at length in the body thereof. [*Act approved March 4, 1907, § 2.*] (*10th Sess. Chap. 75.*)

3420. *Bonds may be issued in installments as work progresses.*—The said city or town council may provide, by contract with the person or persons, or corporation doing the work or making the improvement for the payment of which said bonds are issued, to deliver the said bonds in installments as the said work progresses, or upon the entire completion thereof, and may make such provisions as it seems best for the securing the faithful performance of the said contract; *provided*, however, that no bonds must be delivered to the said contractor or contractors, or other persons, in excess of the amount of the work actually done at the time of delivery, nor shall the total amount issued be in excess of the total cost and expense of the said improvement, and no bond shall be delivered or received in payment of a less sum than its face value. All expenses of making the said improvement, including survey and supervisions and interest on the installments of bonds delivered from the date of delivery to the date fixed by ordinance as the date of issuance, when so provided by the contract, at the same rate as that fixed in the bonds, shall be considered a part of the expense of said improvement, and bonds in payment therefor may be issued. [*Act approved March 4, 1907, § 3.*] (*10th Sess. Chap. 75.*)

3421. *Registration of bonds.*—The said bonds, when delivered to the contractor, shall be registered by the city or town clerk in a book to be provided for that purpose, which said register shall show the date and amount of the bond, date of delivery, person to whom delivered, the rate of interest, date of maturity. [*Act approved March 4, 1907, § 4.*] (*10th Sess. Chap. 75.*)

3422. *Special assessments to raise funds.*—When the work is completed for which bonds are issued and delivered under the provisions of this Act, the city or town council shall provide by resolution for the levy of special assessments against the property embraced in said improvement district to pay the entire cost and expenses of making the improvements to pay for which bonds are issued, which said resolution shall declare that the amount charged thereby against each lot or parcel of land may be paid in equal installments, the number of which installments shall be equal to the number of years which the bonds issued may run after the date of issuance, and shall include the interest charges to pay the annual interest payments upon the entire issue of bonds, which said special assessments shall be levied and collected in the same manner as is now provided by law and ordinance for such improvements where warrants are issued in payment thereof, except as herein otherwise provided. Whenever

any special assessments levied to pay for the cost and expenses of making improvements for which bonds have been issued hereunder shall be found to be invalid in whole or in part for want of form or insufficiency, informality or irregularity, or non-conformance with the laws and ordinance governing such assessments, the city or town council shall be, and it is hereby authorized to re-levy such special assessments and to enforce their collection in accordance with the provisions of law existing at the time the levy is made. Whenever, for any cause, mistake or inadvertance, the amount assessed shall not be sufficient to pay the cost of the improvement made or enjoyed for the payment of which bonds have been issued, it shall be lawful, and the city or town council is hereby directed and authorized to make re-assessments on all property included in said improvement district, sufficient to pay the entire cost and expense of making the improvements to pay for which bonds have been issued, such re-assessment to be made and collected in accordance with the provisions of the law and ordinance existing at the time of its levy. No suit to set aside the special assessment provided for herein or to enjoin the making of the same, shall be brought, nor any defense to the validity thereof be allowed after the expiration of thirty days from the time the resolution finding the amount due on each lot or piece of ground liable for assessment is finally adopted. [*Act approved March 4, 1907, § 5.*] (10th Sess. Chap. 75.)

3423. *Notice of assessment; redemption.*—The owner of any lot or parcel of land charged with any such assessments may redeem the same from all liability for the cost and expenses of such improvement by paying the entire assessment charged against said lot or parcel of land, without interest, within thirty days after notice to him of such assessment, which notice shall be given as follows: The city treasurer shall, as soon as the assessment roll has been placed in his hands for collection, publish a notice in the official newspaper of the city or town for five days, that said roll is in his hands for collection, and that any assessment therein may be paid at any time within thirty days from date of the first publication of such notice without penalty, interest or cost. The owner of any such lot or parcel of land may redeem the same from all liability for such assessment at any time after said thirty days by paying the entire installments of such assessment remaining unpaid and charged against said lot or parcel of land at the time of such payment, with interest thereon to the date of maturity of the installment next falling due. Where any assessment or installment thereof is paid as herein provided, the same shall be paid to the city treasurer, or to the officer whose duty it is to collect such assessment, and all assessments so paid shall be applied solely to the payment of the cost and

expense of such improvement, or the redemption of the bonds issued therefor. Where any lot or parcel of land has been redeemed from liability for the cost of any improvement, as herein provided, such lot or parcel of land shall not thereafter be liable for further special assessment for the cost of such improvement, except as hereinbefore provided in § 3422 (5). [*Act approved March 4, 1907, § 6.*] (10th Sess. Chap. 75.)

3424. *Payment of bonds.*—The city treasurer shall pay the interest on the bonds issued under the provisions of this Act out of the respective improvement district fund from which they are payable. Whenever there shall be sufficient money in the said improvement district fund, against which bonds have been issued under the provisions of this Act, over and above sufficient for the payment of interest on all bonds, to pay the principal of one or more bonds, the city treasurer shall call in and pay such bonds in their numerical order. The call therefor shall be made by publication in one issue of the official newspaper of the city or town on the day following the delinquency of the installment of the assessment, or as soon thereafter as practicable, and shall state that certain bonds (giving the serial number or numbers of bonds called) will be paid on presentation to the city treasurer upon or after a date fixed therein, and interest on said bonds shall cease from and after the date fixed in said notice. [*Act approved March 4, 1907, § 7.*] (10th Sess. Chap. 75.)

3425. *Collection of delinquent assessments. Actions by bond holder.*—If the owner of any parcel, lot or lots of land, liable for the payment of any bond issued under the provisions of this Act, shall fail to pay any assessment or assessments levied in accordance herewith, when due, the owner of any such unpaid bond or bonds may proceed in his own name to collect such assessments, and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, five per centum, together with the cost of such suit. Any number of holders of such bonds for any single improvement may join as plaintiffs, and any number of owners of property on which said delinquent assessments are a lien may be joined as defendants in such suit. [*Act approved March 4, 1907, § 8.*] (10th Sess. Chap. 75.)

3426. *Improvements consisting of distinct kinds of work.*—Whenever any proposed improvement shall consist of separate and distinct kinds of work, requiring performance at separate and distinct times, the city or town council may provide, by resolution, for the letting of the contract for the doing of such work at separate and distinct times, and, in that event, a separate series of bonds for the payment of the cost and expenses incurred under each of the said contracts may be issued as hereinabove provided, which said several series shall, as regards the provisions

for the issuance of bonds, levy of assessments, payment of bonds and interest, be treated as separate and distinct issues, but the liens of such said several series upon the property affected thereby shall be of equal rank, the same as if all of the said bonds and the said several series thereof had been issued under the provisions of one ordinance; and the property affected by the levy of the assessment for the several series shall not be finally discharged from the lien of such assessments until the assessments to pay all of the said series have been fully paid and discharged. [*Act approved March 4, 1907, § 9.*] (10th Sess. Chap. 75.)

3427. *Extent of lien.*—Neither the holder nor owner of any bond issued under the authority of this Act shall have any claim therefor against the city by which the same is issued, except from the special assessments made for the improvement for which said bond was issued. [*Act approved March 4, 1907, § 10.*] (10th Sess. Chap. 75.)

3428. *Bonds may be issued in place of warrants heretofore issued.*—Whenever any city or town has heretofore entered into a contract providing for the issuance of bonds for the purpose of paying the cost and expense of district improvements and has issued warrants in lieu of such bonds, such city or town may, by resolution, with the consent of the holders of such bonds or warrants, exchange them for bonds issued under and in accordance with the provisions of this Act; *provided, however*, that the said bonds so issued under the provisions of this Act shall not exceed in their terms the terms for which such original bonds or warrants were issued. [*Act approved March 4, 1907, § 11.*] (10th Sess. Chap. 75.)

3429. *Validity of outstanding bonds or warrants not affected by this act.*—That Chapter 73 of the Acts of the Legislative Assembly of 1905, entitled: “An Act relating to internal improvements in cities and towns authorizing the issuance and collection of special improvement warrants or bonds upon the property benefitted by local improvements,” be, and the same is hereby repealed; *provided, however*, that nothing herein contained shall be construed to affect the validity of any bonds or warrants heretofore issued or contracted to be issued under the provisions of the said Act, nor shall this Act be construed as repealing or modifying any existing law relative to the creation of special improvement district or the levying and collection of assessments to defray the costs and expenses of such improvements where warrants are issued in payment thereof; but this Act shall be construed as conferring additional and concurrent power and authority. [*Act approved March 4, 1907, § 12.*] (10th Sess. Chap. 75.)

ARTICLE XI.

ABATEMENT OF SMOKE NUISANCES.

Section 3430. *Injurious smoke may be abated.*

“ 3431. *Petition for abatement.*

“ 3432. *Contract.*

“ 3433. *Bonds.*

“ 3434. *Election.*

“ 3435. *Notice of election.*

“ 3436. *Character of bonds.*

“ 3437. *Sale of bonds.*

“ 3438. *Payment of bonds.*

“ 3439. *Modification of contract.*

“ 3440. *Provisions concerning election.*

3430. (§ 4831.) *Injurious smoke may be abated.*—That it shall be lawful for any county or incorporated city or town in any county in this state, where injurious and unhealthy smoke and fumes exist, to make contracts for the abatement thereof, and issue and dispose of bonds for that purpose, subject to the limitations and conditions hereinafter provided. [Act approved March 8, 1893.]

3431. (§ 4832.) *Petition for abatement.*—Wherever a petition is presented to the board of county commissioners of any county, or to the council of any incorporated city or town, signed by at least one hundred of the resident taxpayers of such county, or incorporated city or town, requesting that a contract be made and vote taken under this act, it shall be the duty of the board of county commissioners of such county or council of such incorporated city or town, as the case may be, to enter into and make a contract for the abatement of such injurious and unhealthy smoke or fumes, or for conducting or carrying the same away, so as to remove or lessen the injurious and unhealthy results thereof as effectually as the same can be done; that such contract shall be entered into and made with such person or persons, corporation or corporations, and contain such provisions and conditions as will in the opinion of the board of county commissioners, or council of said incorporated town or city, as the case may be, best accomplish the purpose aforesaid, and shall take effect and be in force as provided in this act. [Act approved March 8, 1893.]

3432. (§ 4833.) *Contract.*—Whenever a contract shall have been entered into, as aforesaid, it shall be reduced to writing and executed by the parties in due form of law, and three copies thereof deposited with the clerk of the board of county commissioners, or clerk of the council, as the case may be, for public inspection and examination and the person or persons, corporation or corporations with whom said contract shall have been made shall execute their or its bond or bonds with sufficient sureties to

such board of county commissioners, or city or town, conditioned for the full and faithful performance of all the terms and conditions on their part, the terms, conditions and penalty of which shall be approved by the contracting board or council, which said bond or bonds to be in full force and effect upon the ratification thereof as hereinafter provided, which condition shall be expressed therein. [*Act approved March 8, 1893.*]

3433. (§ 4834.) *Bonds.*—That the purpose of raising moneys to meet the payments under the terms and conditions of said contract, and other necessary and proper expenses in and about the same, and the approval or disapproval thereof, it shall be the duty of the board of county commissioners, if the petition be presented to it, within thirty days thereafter, to ascertain the existing indebtedness of the county in the aggregate, and within sixty days after ascertaining the same to submit to the electors of such county the proposition to approve or disapprove the said contract and the issuance of bonds necessary to carry out the same, which shall not exceed five per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring said indebtedness; and if said petition be presented to the council of any incorporated city or town, then within thirty days thereafter they shall ascertain the aggregate indebtedness of such city or town, and, within sixty days after ascertaining the same, submit to the electors of such city or town the proposition to approve or disapprove said contract and the issuance of bonds necessary to carry out the same, which shall not exceed three per centum of the value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner hereinbefore provided, and if disapproved, the expenses of such election shall be paid out of the general fund of such county, city or town, as the case may be. [*Act approved March 8, 1893.*]

3434. (§ 4835.) *Election.*—The vote upon such proposition shall be had at an election for that purpose to be held, conducted, counted and results ascertained and determined in the manner and by the same officers provided by law for general elections, except as otherwise herein provided, and the proposition to be submitted shall be upon printed tickets or ballots, upon each of which shall be printed the following: "For the contract and bonds," "Against the contract and bonds," the former above the latter, and the elector shall indicate his vote by a cross opposite the one or the other for which he votes, and if it appears from the result of such election that a majority of the votes cast were "For the contract and bonds," then said contract shall be in full force and effect, and the said bonds shall be issued and disposed of in the manner hereinafter provided, and if it shall appear from

the result of such election that there was a tie, or a majority of said votes were cast "Against the contract and bonds," then the said contract and bond given for its fulfillment shall be null and void and of no effect, and said bonds and none thereof shall be issued. [*Act approved March 8, 1893.*]

3435. (§ 4836.) *Notice of election.*—The board of county commissioners of the county in which such election is to be held, or the council of the incorporated city or town, as the case may be, shall give notice of such election, stating the objects thereof, the time and place of holding the same, such conditions of the contract as in their judgment is proper and necessary to enable the electors to vote intelligently upon the proposition submitted to them, the amount of bonds proposed to be issued, when payable, and the interest they are to bear, with a description of the tickets or ballots to be used, in some newspaper printed and published and circulated in the county or city or town as the case may be in which such election shall be held, at least three times a week for at least six consecutive weeks next preceding such election, and if no newspaper be printed, published and circulated therein, then in some newspaper printed and published in some county nearest thereto. [*Act approved March 8, 1893.*]

3436. (§ 4837.) *Character of bonds.*—The bonds to be issued upon the conditions and under the provisions aforesaid shall bear the date of their issuance; shall be designated as sanitary coupon bonds of the county, city or town issuing the same; shall be of a denomination not less than five hundred or more than one thousand dollars each; shall be payable at such place in New York city or elsewhere at the discretion of the board or council issuing the same; shall bear interest at the rate of six per cent. per annum, payable thirty years after the date thereof, with the privilege of paying the same at any time after five years from such date, which interest shall be payable semi-annually at the place whereat the principal is payable, and for which interest coupons shall be attached to said bonds. If said bonds and coupons are issued by any county they shall be signed by the chairman of the board of county commissioners of such county and attested by the clerk thereof and his seal thereto attached; and if issued by any incorporated city or town, the same shall be signed by the mayor and attested to by the city or town clerk and the seal thereof attached. [*Act approved March 8, 1893.*]

3437. (§ 4838.) *Sale of bonds.*—The board of county commissioners or council, as the case may be, may provide by said contract for the delivery of said bonds, or any part thereof, at their face value, upon the terms and conditions in said contract provided, or may sell and dispose of the same, or any part thereof, to raise funds to carry out said contract, and use such funds for that purpose, and for the payment of any expert or experts, or any

incidental expenses proper and necessary in and about said contract and the carrying out of the same. And in the event said bonds are sold, they shall be sold for cash to the highest bidder, after public notice by publication in a paper of general circulation, which may be printed and published in each county in the state, and also by publication in at least three newspapers of general circulation, printed and published in the cities of Boston and New York. Such notice shall be published at least once a week, and shall contain, in substance, a description of said bonds, as set out in the preceding section of this act, and the proceeds of the sales thereof shall be paid over to the county treasurer, or the city or town treasurer, as the case may be, and kept as a separate and independent fund for the purposes herein provided, and shall be known as the sanitary coupon bond fund, and shall be deposited and kept in such a manner, and at such bank or banks, as the board of county commissioners of the county, or council of the city or town, owning such funds, may direct, and which shall not be paid out or disbursed except upon warrants or orders drawn thereon by the board of county commissioners, or council of such incorporated city or town, signed and attested in the manner provided by law. [*Act approved March 8, 1893.*]

3438. (§ 4839.) *Payment of bonds.*—The faith of the county or incorporated city or town issuing bonds under the provisions of this act is solemnly pledged for the payment of the principal and interest according to the tenor of said bonds and the coupons attached to the same, and the board of county commissioners of the county, or council of the incorporated city or town, issuing said bonds shall ascertain and levy and assess a tax sufficient to pay the interest upon said bonds, and form such sinking fund for the payment of the principal thereof as may be necessary and proper, in the manner provided by law, or ordinance, which shall become a lien and be collected as other taxes, and shall be kept as a separate fund, as hereinbefore provided, and all bonds, coupons, orders and warrants issued and drawn under the provisions of this act shall be promptly paid, registered and entered in books kept for that purpose, and correct and proper entries made in respect thereto, and the same when paid shall be canceled and preserved, and proper entries made thereof, as provided by law in cases of other bonds, warrants and orders. [*Act approved March 8, 1893.*]

3439. (§ 4840.) *Modification of contract.*—In the event it shall be found expedient and proper in executing said contract to modify or change the same in some of the minute details thereof, and such modifications or change shall be agreed upon by the parties thereto, the same may be made with the approval of the judge or judges of the district forming such county, or the judge or judges of the district in which such county or incorporated

city or town is included, and when so approved shall have the same force and effect as if originally contained therein. [*Act approved March 8, 1893.*]

3440. (§ 4841.) *Provisions concerning election.*—That no registration under the election laws of this state shall be required for the purposes of the election herein provided for, and the registration had at the last election preceding the same shall govern and control, and if especially had and done for the purposes of the election to be held under this act. [*Act approved March 8, 1893.*]

ARTICLE XII.

DAMAGE CAUSED BY CHANGE OF GRADE.

Section 3441. Damages must be paid on change of grade.

“ 3442. *Appraisement of damages.*

“ 3443. *Time for report to be made.*

“ 3444. *Appeals and proceedings thereunder.*

“ 3445. *Issues made.*

“ 3446. *Costs how taxed.*

3441. (§ 4940.) *Damages must be paid on change of grade.*—When the grade of any street or sidewalk in any city or town is established by the corporate authority of such city or town, and a building shall thereafter be constructed upon a lot abutting on said street, no change must be made in the grade of such street or sidewalk which requires the raising or lowering of any building so constructed until the damages which may accrue by reason of such raising or lowering are ascertained and paid, as is herein-after provided.

3442. (§ 4941.) *Appraisement of damages.*—In case the council of such city or town and the owner of such building are unable to agree upon the amount of such damages, the council must appoint three disinterested freeholders of such city or town to appraise such damages. The appraisers so appointed, after being duly sworn, must appraise the damage and make two written reports thereof, signed by at least a majority of them, one of which must be delivered to the clerk of such city or town, to be immediately filed in his office, and the other to the owner of the building.

3443. (§ 4942.) *Time for report to be made.*—Such report must be made and delivered within ten days after the appointment of the appraisers.

3444. (§ 4943.) *Appeals and proceedings thereunder.*—Within twenty days after the filing of the report with the clerk, either party feeling dissatisfied with such appraisement may file in the office of the clerk of the district court, within the county in which such city or town is located, a copy of such report, cer-

tified by the clerk of such city or town, and file with said clerk and serve on the opposite party a notice of appeal from such report, whereupon the clerk of the district court must cause such proceedings to be entered on the register of actions, designating such city or town as plaintiff, and the owner of the building as defendant, and the question of the amount of damages may be tried by a jury or the court.

3445. (§ 4944.) *Issues made.*—The report of the appraisers is the complaint, all the material facts of which in reference to damages are considered denied, and these constitute the issues to be tried.

3446. (§ 4945.) *Costs, how taxed.*—In case the owner of the building appeals and the damages are not increased, or in case the city or town appeals, and the damages are decreased in the district court, the costs must be paid by the defendant. In all other cases, or in case no appeal is taken, the cost must be paid by the city or town.

CHAPTER IV.

THE PROCEEDINGS FOR CHANGING CITIES OR TOWNS FROM ONE CLASS TO ANOTHER.

Section 3447. Proceedings for advancement and census.

“ 3448. *Resolution declaring the advancement.*

“ 3449. *New officers, when elected.*

“ 3450. *Old ordinances, etc., remain in force until when.*

“ 3451. *Cities may be reduced in class and proceedings.*

“ 3452. *Disincorporation of city or town and proceedings.*

“ 3453. *Duty of the county clerk and city or town treasurer, property and money to be turned over.*

3447. *Proceedings for advancement and census.*—Whenever it manifestly appears to a city or town council from the last federal, state, county, city or town census, that such city or town has the requisite population to entitle it to be classified as provided in § 3206 (4710), Part IV, Title III, Chapter III, of this Code, such city or town must be advanced as provided in the next Section. [Act approved March 3rd, 1897, § 1.] (5th Sess. 225.)

3448. *Resolution declaring the advancement.*—If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon, by resolution, declare that the town is advanced to a city of the first, second or third class, or a city of the third class is advanced to a city of the second or first class, or a city of the second class is advanced to a city of the first class, as the case may be, and file a certified copy of such resolution in the office of the county clerk of the county, and in the office of the Secretary of State. Where-

upon such town becomes a city of the first, second or third class, and a city of the third class becomes a city of the second or first class, and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this Title. [*Act approved March 3rd, 1897, § 1.*] (*5th Sess. 225-6.*)

3449. (§ 4952.) *New officers, when elected.*—The first election of officers of the new municipal corporation organized under the provisions of this chapter, must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

3450. (§ 4953.) *Old ordinances, etc., remain in force until when.*—All ordinances, by-laws and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this title, remain in force until repealed by the council of the new municipal corporation.

3451. (§ 4954.) *Cities may be reduced in class and proceedings.*—Whenever it appears by the census taken by the United States, state, or otherwise, that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon by a resolution declare that such city be reduced to a city of the second class or town, as the case may be. A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this title. The provisions of § § 3449 (4952) and 3450 (4953) apply to this section.

3452. (§ 4955.) *Disincorporation of city or town and proceedings.*—Whenever it appears by such census that a city or town has a population of less than three hundred inhabitants, the corporate existence of such city or town under this title must be discontinued. The board of county commissioners of the county in which the city or town is situated must declare by resolution that the incorporation thereof be discontinued, and must provide for the payment of the indebtedness of the same and thereafter annually levy a tax on all the property situate within the limits of such city or town until all of such indebtedness is paid. The books, documents, records, papers and seal of such city or town must be deposited with the county clerk for safe keeping and reference, and the records of the police judge or police court must be deposited with one of the justices of the peace of the township in which such city or town is situated, who has power to execute and complete all unfinished business of such police judge or court.

3453. (§ 4956.) *Duty of the county clerk and city or town treasurer, property and money to be turned over.*—The county clerk must send a certified copy of the resolution of discontinu-

ance to the secretary of state, and all moneys in the hands of the city or town treasurer must be paid to the county treasurer, which must be applied in payment of the indebtedness of such city or town, and all other property must be delivered to the board of county commissioners, which must be sold and disposed of for the purpose of paying such indebtedness.

CHAPTER V.

INDEBTEDNESS OF CITIES OR TOWNS. BONDS.

Section 3454. Creation of indebtedness. Submission to taxpayers.

“ 3455. *Notice of election. Ballots. Registration of voters.*

“ 3456. *Notice of sale of bonds.*

“ 3457. *Form of bond.*

“ 3458. *Disposition of proceeds of sale.*

“ 3459. *Tax for interest and sinking fund. Place of payment.*

“ 3460. *Redemption of bonds.*

“ 3461. *Funded debt.*

“ 3462. *Proceedings to fund.*

“ 3463. *Mode of redemption.*

“ 3464. *Refunding bonds.*

3454. *Creation of indebtedness. Submission to taxpayers.*—Whenever the council of any city or town, having a corporate existence in this State, or hereafter organized under the provisions of this title, shall deem it necessary to borrow money or contract indebtedness under its powers, as set forth in subdivision 64 of Section 3259 (4800) of the Political Code, or amendments thereto, the question of issuing bonds or contracting such indebtedness shall first be submitted to the qualified electors of such city or town in the manner hereinafter set forth, *Provided*, that tax payers only, as defined by Sections 468 (1187) and 469 (1188), of the Political Code, shall be entitled to vote on questions concerning the construction, purchase or securing of a water plant, water system, water supply, or sewerage system. [Act approved March 6th, 1897, § 1.] (5th Sess. 226.)

3455. *Notice of election. Ballots. Registration of voters.*—Notice of such election must be published for a period of not less than three weeks in some newspaper published in the city or town, if there be one, and if not then in the newspaper published at a point in the State nearest to the city or town, and such notice must be posted in not less than three public places in the city or town. The notice must state the time and place of holding the election, the amount and character of the bonds proposed to be issued and the particular purpose therefor. At such election the

ballots must contain the words "Bonds—Yes;" "Bonds—No;" and in voting the elector must make a cross thus, "X" opposite the answer for which he intends to vote. Such election must be conducted and canvassed and the returns made in the same manner as other city or town elections. The council may provide by ordinance for the registration of the tax payers or qualified electors of such city or town, and no person shall be entitled to register or vote at such election who is not a tax payer or qualified elector as hereinbefore set forth. [*Act approved March 6th, 1897, § 2.*] (*6th Sess. 226-7.*)

3456. *Notice of sale of bonds.*—If the majority of the votes cast at the election be for "Bonds—Yes," the council must give notice by advertising in some paper published in the city or town, if there be one, and if not then in the newspaper published at a point in the State nearest to the city or town, and also in some newspaper published in New York City for a period of not less than four weeks, to the effect that the city or town will sell such bonds, briefly describing them, at public auction, and stating the time when and place where such sale will take place. [*Act approved March 6th, 1897, § 3.*] (*5th Sess. 227.*)

3457. *Form of bond.*—Such bonds must be in such form as the council, by ordinance, directs, and be in the denominations of one hundred dollars or multiples thereof. The bonds and coupons attached must be signed by the mayor and the city or town clerk, and the date of issue must be registered by the clerk; *Provided*, a lithographic or engraved fac simile of the signatures of the mayor and the city or town clerk may be affixed to the coupon only, when so recited in the bond. The bonds must be sold at not less than their par value, and at a rate not exceeding six per cent per annum, payable semi-annually; *Provided*, that the bonds may be sold either to the bidder offering the highest price for them or the bidder offering to purchase the bonds at the lowest rate of interest, which rate shall not exceed six per cent per annum, and a notice of sale must clearly state which form of bids is required. In case bonds authorized to be issued to fund outstanding bonds or warrants shall not be sold at or after the advertised date of sale, the city may exchange the same at not less than par for such outstanding bonds or warrants at their face value, with accrued interest added. [*Act approved February 15, 1907, § 1.*] (*10th Sess. Chap. 15.*)

3458. *Disposition of proceeds of sale.*—The money arising from the sale of bonds must be paid into the city or town treasury, and applied only to the purposes for which the bonds were issued. [*Act approved March 6th, 1897, § 5.*] (*5th Sess. 227.*)

3459. *Tax for interest and sinking fund. Place of payment.*—A tax to be fixed by ordinance must be levied each year for the purpose of paying interest on the bonds and to create a sinking

fund for their redemption. The treasurer of such city or town must pay in lawful moneys of the United States, on each first day of January and the first day of July after the issue of the bonds, the interest due thereon, upon presentation at his office of the proper coupons, which must show the amounts due and the number of the bonds to which they severally belong. In case the purchaser of such bonds gives the treasurer notice in writing that he wishes the bonds so held by him and the interest thereon, to be paid in New York City, then such bonds and coupons shall be payable in New York City at such bank as shall be designated by the city or town treasurer and all bonds and coupons so paid must be returned to the city or town council at its next monthly meeting and must be immediately cancelled by the clerk. [*Act approved March 6th, 1897, § 6.*] (5th Sess. 227-8.)

3460. *Redemption of bonds.*—The bonds shall be made payable in not to exceed twenty years, and redeemable at such times as are prescribed in the ordinance directing their issue. Whenever at any time after such bonds become redeemable the sum in the sinking fund equals or exceeds one thousand dollars, the city or town treasurer must cause a notice to be published in one newspaper published in such city or town, that he will in thirty days from the date of such notice redeem said amount of the bonds which may then be payable, giving the number thereof, and calling for said bonds in their numerical order; and if at the expiration of said thirty days the holder of any bond thus called fails or neglects to present the same for payment, interest thereon must cease; but the treasurer must at all times thereafter be ready to redeem the same on presentation. Such notice must also be sent by mail to the bank in New York City which the treasurer has designated as the bank at which the bonds and the interest thereon will be paid. [*Act approved March 6th, 1897, § 7.*] (5th Sess. 228.)

3461. (§ 4982.) *Funded debt.*—The council of any city or town having a floating indebtedness of ten thousand dollars or more may fund the indebtedness and issue bonds with coupons attached thereto, as hereinafter provided in this chapter.

3462. (§ 4983.) *Proceedings to fund.*—The council, by a resolution, must declare that the existing indebtedness of the town or city shall be funded by the issuance of such bonds. The bonds must be issued for a sum not less than one hundred dollars nor more than one thousand dollars. The interest thereon must not exceed six per cent. per year, payable semi-annually, and may issue to any person holding city or town warrants, indebtedness or just claims against a city or town prior to the passage of such resolution, at par.

3463. *Mode of redemption.*—The issuance of such bonds, the payment of interest thereon, and redemption thereof, must be

made in the same manner, and the same proceedings had as provided in relation to other municipal bonds, except that such bonds are redeemable and payable at such time as prescribed in the ordinance. [*Act approved March 6th, 1897, § 9.*] (*5th Sess. 228.*)

Note.—This section is not mentioned in title of act.

3464. *Refunding bonds.*—That the city or town council of any city or town of the State of Montana, shall have and is hereby given in addition to the power already conferred upon it, authority to issue upon the credit of said city or town, (and sell or dispose of the same) for the purpose of providing the necessary funds to pay maturing, redeemable, or optional bonds, under the following conditions, to-wit:

1. When there is not sufficient money to the credit of said city or town applicable to pay any of said bonds.

2. When in the judgment of the city or town council to levy and collect a tax, for the purpose of paying any of said bonds, would be a hardship and a burden to said city or town.

3. All bonds issued under the provisions of this section shall bear upon their face the words, "Refunding City or Town Bonds," as the case may be, and shall also recite in the body of the bonds, that "this bond is issued for the purpose of providing funds to pay maturing, redeemable, optional and outstanding bonds," as the case may be.

4. Said bonds shall bear interest at a rate not to exceed six per cent per annum, with interest payable semi-annually, and payable and redeemable within a period not exceeding twenty years from the date of the issue; *provided* said bonds shall not exceed in amount the face value of the bonds (and any accrued interest thereon) which they are issued to replace.

5. The city or town council shall fix the denomination, term, rate and form of said bonds not inconsistent with the requirements hereinbefore set forth; and may issue, dispose of or sell said bonds, at any time deemed necessary and expedient to enhance, preserve and maintain the credit of said city or town.

6. Said bonds, when offered for sale, shall be advertised for sale in not less than one newspaper of general circulation, published in the State of Montana, for a period of not less than four weeks preceding the date fixed for the sale of said bonds, and said bonds may in the discretion of the said city or town council be advertised in a financial newspaper published in the city of New York of general circulation; said advertisement shall briefly describe the bonds, stating the time when, and the place where said sale shall take place; *provided*, that said bonds shall not be sold at less than par value and accrued interest, and the said city or town council is authorized to reject any bids made, and sell said bonds at private sale or exchange them for outstanding bonds, if they deem it for the best interest of the said city or town

to do so, and it shall not be necessary to hold any election or submit the matter of the issuance of the bonds authorized by this act to the electors of said city or town.

7. Said bonds and coupons attached shall be signed by the mayor and clerk of said city or town; *provided*, a lithographic or engraved fac simile of the signatures of the mayor and clerk may be affixed to the coupons only when so recited in the bonds, and the corporate seal of said city or town shall be affixed to each bond.

8. Each bond so issued shall be registered by the city or town clerk in a book provided for that purpose, which shall show the date, number, term and amount of each bond, and the person or persons to whom the bonds are issued and sold. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 124.)

CHAPTER VI.

PLATS OF CITIES, TOWNS, AND ADDITIONS THERETO.

- Section 3465. Plat or addition to be made and recorded.*
 “ 3466. *What plat must contain.*
 “ 3467. *Survey, who to make and what to contain.*
 “ 3468. *What survey to contain continued.*
 “ 3469. *Certificate of surveyor.*
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 “ 3476. *New survey and plat may be ordered.*
 “ 3477. *Form of plat may be prescribed by ordinance.*
 “ 3478. *Land within the limits of a city or town may be platted by the owner.*

3465. (§ 5000.) *Plat or addition to be made and recorded.*—Any person who may lay out any city, town or addition to any city or town, must cause to be made an accurate survey and plat thereof, and cause the same to be recorded in the office of the county clerk.

Farlin v. Hill, 27 Mont. 33; 69 Pac. 239.

3466. (§ 5001.) *What plat must contain.*—The plat must show as follows:

1. All streets, alleys, avenues and highways, and the width thereof.

2. All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.

3. All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot and block.

4. The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

5. The location of all stone or iron monuments set to establish street lines.

6. The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

7. The location of all section corners, or legal subdivision corners of sections within the limits of said plat.

8. The adjoining block corners of all surveyed and adjoining additions. In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot.

Farlin v. Hill, 27 Mont. 33; 69 Pac. 239.

3467. (§ 5002.) *Survey, who to make and what to contain.*—A survey of the city or townsite, or addition, must be made by the county surveyor, or some other competent surveyor, who must mark all the corners of the blocks and lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be six inches by six inches, and be placed in the ground to the depth of one foot.

3468. (§ 5003.) *What survey to contain continued.*—If a stone is used as a monument it must have a cross cut in the top at the point of intersection of the street lines, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and establish permanently the lines of all the streets.

3469. (§ 5004.) *Certificate of surveyor.*—The surveyor must make and subscribe in the plat a certificate that such survey was made according to the provisions of this chapter, stating the date of survey, and verify the same by his oath.

Farlin v. Hill, 27 Mont. 33; 69 Pac. 239.

3470. (§ 5005.) *Certificate of dedication and form.*—The owner of the land so platted, or his duly authorized attorney, must make on such plat a certificate, to be known as "The certificate of dedication," which may be in the following form: ———, do

hereby certify that — have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat and certificate of survey hereunto annexed, the following described tract of land, to-wit: (Here describe land included in plat) to be known and designated (here give full name of city, town or addition), and the lands included in all streets, avenues and alleys, and parks or public squares shown on said plat, are hereby granted and donated to the use of the public forever. Dated this ——— day of ———, A. D. ———; which must be signed by all the owners and acknowledged in the same manner as a deed.

Farlin v. Hill, 27 Mont. 34; 69 Pac. 239.

3471. (§ 5006.) *Mortgagees must sign and release.*—Persons holding mortgages on such land must also sign the certificate, and release the same in the county clerk's office before such city or townsite, or addition, is approved by the council.

3472. (§ 5007.) *Plat to be approved, and certificates.*—All such plats must be examined by the council of the city or town, and a copy thereof must be filed with the city or town clerk. A certificate of the approval by the council, signed by the mayor and clerk, and also a certificate of the city or town surveyor, or of the person acting as such, that the plat conforms to the adjoining additions or parts of the city or town already platted, as near as the circumstances will admit, must be written on the plat before the same is filed in the office of the county clerk.

3473. (§ 5008.) *Plats must be made on mounted drawing paper, filed and recorded.*—All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county clerk, and he must keep the original plat for inspection.

3474. (§ 5009.) *No lots to be sold until plat recorded; penalty.*—Such plat must be recorded before any lots or blocks are sold or transferred in any manner and the owner thereof, or any part of the same, must forfeit or pay for each lot sold or transferred before the recording of such plat, a penalty not less than ten nor more than one hundred dollars, which must be recovered by the county attorney for the use of the county.

3475. (§ 5010.) *Donations or grant on a plat has the effect of a deed.*—Every donation or grant to the public, or to any person, society or corporation, marked or noted as such on the plat of the city or town, or addition, must be considered, to all intents and purposes, as a deed to the said donee.

3476. (§ 5011.) *New survey and plat may be ordered.*—Whenever the recorded plat of any city or town, or addition thereto, does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or town or addition, the council is authorized to cause a new and correct survey and plat of such city or town or addition to be made and recorded in the office of the county clerk, which corrected plat must

follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the surveyor making the same must be indorsed thereon, referring to the original plat corrected thereby, and the defect existing therein, and corrected by such new survey and plat. The ordinance authorizing the making of such new plat must be recorded in the office of the county clerk. The surveyor's certificate must show where said ordinance is recorded.

3477. (§ 5012.) *Form of plat may be prescribed by ordinance.*—The council of any city or town has power by ordinance to prescribe the manner and form of making any survey of any plat of lands within the city or town.

3478. (§ 5013.) *Land within the limits of a city or town may be platted by the owner.*—Any tract of land within the limits of a city or town may be platted by the authority of the council of such city or town, and the cost thereof must be taxed to the owner of such land, but the owner may plat the same and file and record it. No such plat is valid until approved and accepted by the council.

CHAPTER VII.

MISCELLANEOUS PROVISIONS.

Section 3479. *Council may discontinue streets.*

“ 3480. *Notice must be given.*

“ 3481. *Existing cities reorganized under this title.*

“ 3482. *Such cities become cities of the first or second class or towns.*

“ 3483. *Old officers continue in office, and election.*

“ 3484. *The effect of reorganization of cities and towns under this title.*

“ 3485. *Cities and towns responsible for damages by mobs and riots.*

“ 3486. *Judgments against cities or towns, how paid.*

“ 3487. *Judgment may be funded.*

“ 3488. *The council may establish a free public library.*

“ 3489. *Question submitted to electors, and election.*

“ 3490. *Library established.*

“ 3491. *Inhabitants of city or town competent jurors.*

“ 3492. *Certain ordinances validated.*

3479. (§ 5030.) *Council may discontinue streets.*—The council may discontinue a street or alley in a city or town, or any part thereof, upon the petition in writing of all the owners of lots on the street or alley, if it can be done without detriment to the public interest.

3480. (§ 5031.) *Notice must be given.*—Before acting upon such petition a notice must be published or posted in three pub-

lic places, stating when such petition will be acted on, and what street or alley, or part thereof, is asked to be vacated. Such notice must be published in a newspaper or posted at least one week before the petition is acted on.

3481. (§ 5032.) *Existing cities reorganized under this title.*—All cities and towns existing or heretofore incorporated under the laws of the territory or state of Montana, either under general or special laws or charters, on the adoption of this Code become and are incorporated under the provisions of this title, and have the powers conferred, or that may hereafter be conferred by law, upon cities or towns of the class to which each may belong.

3482. (§ 5033.) *Such cities become cities of the first or second class or towns.*—Such cities or towns are and become cities of the first or second class or towns according to their population as determined by the federal census of 1890.

3483. (§ 5034.) *Old officers continue in office, and election.*—All officers of such city or town holding office at the time of the adoption of this Code remain in office until the next annual election and the first Monday of May next ensuing thereafter, and until their successors are elected and qualified. The duties and compensation of such officers and the liabilities of sureties on official bonds remain the same. All elections must be held under the provisions of this title.

3484. (§ 5035.) *The effect of reorganization of cities and towns under this title.*—Any such city or town is the identical corporation theretofore existing, and the reorganization under this title in no way affects or impairs the title to any property owned or held by such city or town, or in trust therefor, or any debts, demands, liabilities, bonds or other evidences of indebtedness, or other obligations in favor of or against such city or town, or any action or proceeding then pending, nor does it operate to repeal or affect in any manner any ordinance, resolution or by-law theretofore passed or adopted and remaining unrepealed, or to discharge any person from any liability, civil or criminal, for any violation thereof; but such ordinances, resolutions and by-laws, so far as the same are not in conflict with this title, are and remain in full force until repealed or amended, and all proceedings commenced theretofore, after the adoption of this Code must be conducted in accordance with the provisions of this title.

3485. (§ 5036.) *Cities and towns responsible for damages by mobs and riots.*—Every city or town is responsible for injuries to real or personal property within its corporate limits done or caused by mobs or riots.

May v. Anaconda, 26 Mont. 142; 66 Pac. 760. This section creates a liability which did not exist at common law, and imposes a new burden on municipal corporations. A city is negligent in permitting a boulder constituting a

dangerous obstruction to remain in a street for many months. This section does not indicate a legislative intent to exempt cities from liability for all other torts than those mentioned therein.

3486. (§ 5037.) *Judgments against cities or towns, how paid.*—On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must by ordinance direct that the amount of such judgment be paid out of the general fund, and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same, and the council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of three years from its presentation, if there is not sufficient money as aforesaid in the general fund to pay the same.

3487. (§ 5038.) *Judgment may be funded.*—If any judgment rendered against any town or city exceeds the sum of ten thousand dollars, the council may fund the same as other indebtedness against the city or town is funded.

3488. *The council may establish a free public library.*—The council has power to establish and maintain a free public library, and for that purpose may provide by ordinance for a tax as follows: In a city or town having assessed valuation of one million dollars or more, a tax not exceeding two mills on the dollar on the property may be levied. In a city or town having an assessed valuation of less than one million dollars and more than seven-hundred and fifty-thousand dollars, a tax not exceeding two and one-half mills on the dollar on the property may be levied. In a city or town having an assessed valuation of less than seven hundred and fifty thousand dollars, a tax not exceeding three mills on the dollar on the property may be levied. The tax so levied and collected constitutes a fund known as the "Library Fund," and must be expended only for the purchase of books and other things necessary for a library, and the support and maintenance thereof. *Provided*, that no increase over the present authorized levy shall be made until the question of such increase has first been submitted to a vote of the tax-payers affected thereby. [Act approved March 2, 1905, § 1.] (9th Sess. Chap. 62.)

3489. (§ 5040.) *Question submitted to electors, and election.*—Before any such ordinance is passed the council must submit to the qualified electors of the city or town at any election, the question. At such election the ballots must have printed or written thereon the words "Public Library—Yes;" "Public Library—No," and in voting the elector must make a cross thus, "X," opposite the answer for which he intends to vote.

3490. (§ 5041.) *Library established.*—If the majority of the votes cast at such election is in favor of the establishment of a public library, then such library must be established as above provided. Such question may be submitted at the annual or at

any special election held in such city or town, and must be submitted at any such election on the petition of one hundred or more inhabitants of such city or town.

3491. (§ 5042.) *Inhabitants of city or town competent jurors.*—On the trial of an action in which a city or town is interested, the inhabitants thereof are competent jurors, if otherwise competent and qualified according to law.

3492. (§ 5043.) *Certain ordinances validated.*—That any and all ordinances of any city or town within Montana, which have been heretofore duly recorded and signed by the mayor or presiding officer of the council and by the city clerk, as provided by § 334 of an act entitled “An act to amend § 334 of the Compiled Statutes of Montana, fifth division, relating to printing and posting city ordinances,” duly approved March 9, 1889, which may have been published in some newspaper published within the limits of the city or town, or written copies of which said ordinances may have been posted in not less than five conspicuous places within the limits of such city or town, are hereby declared to have the same legality and validity as if such publishing or posting had been duly directed by the council of such city or town, and as if the city clerk had attached at the expiration of each term of posting and at the end of any such ordinance or ordinances as recorded in the book of ordinances, his certificate as to the fact of posting such ordinance or ordinances, as provided for by said act herein referred to. [Act approved March 2, 1895.]

CHAPTER VIII.

CITY AND TOWNSITES ON THE PUBLIC LANDS OF THE UNITED STATES.

ARTICLE I. CITY AND TOWNSITES IN INCORPORATED CITIES AND TOWNS.

II. TOWNSITES IN UNINCORPORATED TOWNS.

ARTICLE I.

CITY AND TOWNSITES IN INCORPORATED CITIES AND TOWNS.

Section 3493. *Council to enter land in United States land office.*

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“ 3510. *School lots.*

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“ 3512. *Informality not to invalidate.*

“ 3513. *City or townsite on school lands.*

3493. (§ 5060.) *Council to enter land in United States land office.*—It is the duty of the city or town council of any city or town in this state, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes of proceedings, at a regular meeting, to authorize the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this article and the intentions of the act of congress of the United States entitled “An act for the relief of the inhabitants of cities and towns upon the public lands,” approved March second, eighteen hundred and sixty-seven, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of congress.

3494. (§ 5061.) *Filing approved plat.*—The corporate council of every city and town, situated upon the public lands of this state, must, within three months after date of receipt at the United States district land office of the approved plat of the township, embracing the lands upon which the town or city is situated, file in said land office an application in writing, describing the tract of land thus occupied, and thereafter make proof and payment for the tract in the manner required by law.

3495. (§ 5062.) *Survey.*—The said council must, after the filing of the application, if not previously done, cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such

survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said city or townsite must be designated on the map, showing the name or names of the possessor, or occupants and claimants if other than the occupant of each particular lot and parcel of land; and in case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely.

3496. (§ 5063.) *Plat, what to contain.*—A plat thereof must be made in duplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county clerk of the county wherein the city or town is situated, and one must be deposited with the city or town clerk. These plats shall be considered public records, and must each be accompanied with a copy of the field-notes, and the county clerk must make a record thereof in a book to be kept by him for that purpose. The said surveyor must number the blocks as divided by the roads and streets opened at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats, field notes, and records.

3497. (§ 5064.) *Notice of survey.*—Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in any newspaper or newspapers published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders and claimants thereof; and the council is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

3498. (§ 5065.) *What dedicated to public use.*—All streets, roads, lanes, and alleys, public squares, school lots, cemeteries, commons, parks and levees, surveyed, marked and platted on the map of any city or townsite, as prescribed and directed by the provisions of this article, are hereby declared to be dedicated to public use by the filing of such city or town plat in the office of

the county clerk, and become the property of such town or city, and be subject to the control of the council or other municipal authority of such town or city.

3499. (§ 5066.) *What plat must show.*—Such plat must show such matters as are contained in § 3460 (5001), chapter VI., of this title, and must be made, kept and filed in the same manner as provided in § 3473 (5008), chapter VI., of this title.

3500. (§ 5067.) *Assessment to pay expenses.*—Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre, in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, or unenclosed, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury.

3501. (§ 5068.) *Claims for lands.*—Every person, company, corporation, or association, claimant of any city or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within six months after the plat has been filed in the office of the county clerk, his, her or their affidavit, verified in person or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and

every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall thereon certify to be due for the assessment mentioned in the preceding section, together with the further sum of five dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this article, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

3502. (§ 5069.) *Deficit in expenses, how collected.*—If it is found that the amounts hereinbefore specified as assessments and fees for cost and expenses, prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in § 3500 (5067); which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued.

3503. (§ 5070.) *Deed to be given after six months; adverse claims.*—At the expiration of six months after the issuance of such certificate, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, or to his, her, or their heirs, administrator, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this article provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands against such grantee, his heirs or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her, or their assigns, unless such action shall be commenced within two years after such deed shall have been filed for record in the office of the county clerk of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a pos-

sessory claim or title to real estate, when such action is barred by law at the time of the passage of this code.

3504. (§ 5071.) *Mining claims.*—Whenever mining claims have been located prior to the passage of this code, and where the same are prior in location to the claim of any occupant for other purposes, such mining rights, according to the metes and bounds so located and claimed, are not in any manner affected by the provisions of this article; nor must any sale be made, nor any title be conveyed by reason of any sale of such lands so claimed for mining purposes, until after the occupancy of such mining claims shall have been abandoned by the holders thereof.

3505. (§ 5072.) *Settlement of adverse claims.*—In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed in accordance with the facts; but in all other cases of adverse claim the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the city or town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the council must deliver a deed to the party in possession, as provided in this article.

3506. (§ 5073.) *Notice of filing plat.*—The said council must give public notice by advertising for four weeks in any newspaper published in said city or town, and if there be no newspaper published in said city or town, then by publication in some newspaper having the most general circulation in such city or town, and not less than five written or printed notices must be posted within the limits of such city or townsite; such notice must state that the plat thereof has been filed in the clerk's office. If any person, company, association, or any other claimant of lands in such city or town fails, neglects, or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this article, within six months after the filing of said plat, the clerk must enter on his book the names of all such persons, with a description of the

property or premises, and certify the same as delinquent for the amount of assessment certified to by such clerk as due, under this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the said council must advertise all such lots and parcels of land for sale, in the same manner as real estate is required to be advertised under execution.

3507. (§ 5074.) *Sale of delinquent lands.*—At the time of sale mentioned in the advertisement the marshal of the city or town must sell all such parcels of lands so remaining delinquent at public auction to the highest bidder for cash, at some public place within the limits of the city or townsite; and he must give the purchaser at such sale a certificate of his purchase, setting forth therein the description of the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments and the costs of making the sale, which costs shall be divided pro rata among the several parcels offered for sale.

3508. (§ 5075.) *Redemption.*—At any time within six months after such sale the original claimant is entitled to redeem such premises by paying to the purchaser, or the clerk of the council for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the council a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs or assigns to a writ of assistance from the district court having jurisdiction of the premises.

3509. (§ 5076.) *Unclaimed lands.*—If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the council must cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, school house lots, parks and levees, and cause all necessary roads, streets, lanes and alleys to be laid out through the same and dedicated to public use; and the council may sell the same in suitable parcels to possessors of adjoining lands or to other persons of said town at a price not less than five dollars per acre or fraction of an acre; and in case two or more claimants apply for the same tract, or parcel of the same tract, they must sell the same by auction to the highest bidder. If any such lands remain unsold at the end of six months after the filing of the town plat, the council has power to sell such vacant lands at public or private sale in such manner and on such terms as they may deem advisable for the best interests of the town, and shall give deeds therefor to the several purchasers.

3510. (§ 5077.) *School lots.*—All school lots and parcels of land reserved for school purposes must be conveyed to the school trustees of the school district in which such city or town is situate, without cost or charge of any kind whatever.

3511. (§ 5078.) *Surplus of money received to be paid into the treasury.*—All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this article are a charge upon the city or town treasury of each particular city or town ordering the work to be done, to be paid out of the treasury, upon the order of the council; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this article shall be paid into the city or town treasury by the officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be paid into the general fund.

3512. (§ 5079.) *Informality not to invalidate.*—No mere informality, failure, or omission on the part of any of the persons or officers named in this article invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this article is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

3513. (§ 5080.) *City or townsite on school lands.*—When the lands of such city or town are on a school section or subdivision thereof and are owned by the state, the council may procure title and purchase the same from the state and dispose of the same in the manner provided in this article for the disposing of lands purchased from the United States.

ARTICLE II.

TOWNSITES IN INCORPORATED TOWNS.

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3514. (§ 5100.) *District judge to enter at land office.*—It is the duty of the judge of the district court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situated in the county of such district judge, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and the regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this article, and the intention of the act of congress of the United States entitled “An act for the relief of the inhabitants of cities and towns upon the public lands, approved March second, eighteen hundred and sixty-seven,” and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said act of congress.

3515. (§ 5101.) *Estimate of expenses.*—The district judge of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any unincorporated town, whose names appear upon the assessment roll for the year preceding such application—which petition shall set forth the existence, name and locality of such town;

whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands the quarter sections or lesser subdivision covered thereby must be stated; the estimated number of its inhabitants; the number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under said act of congress—must estimate the cost of entering such land, and of the survey and recording of the same, and must indorse such estimate upon said petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said district judge may cause an enumeration of the inhabitants of such town to be made by some competent person, who must be appointed for that purpose by such judge; and such enumeration must be returned by the person making the same, exhibiting therein names of all the heads of families and occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, to the judge.

3516. (§ 5102.) *Survey of lands.*—The judge must thereupon cause a survey to be made by some competent person of the lands which the inhabitants of said town may be entitled to claim under the said act of congress, located according to the legal subdivision of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments. Such surveys must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, levees or parks, cemeteries, and commons, as the same exist, and have been heretofore dedicated in any manner to public use; and by measurement, the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association, within said townsite, must be designated on the plat, showing the name or names of the possessor or occupant, and claimant, if other than the occupant, of each particular lot and parcel of land. In case of any disputed claim as to lots, lands, premises, or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines (in different color from the body of the plat) of such part of any premises so disputed or claimed adversely. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which shall be duly certified under oath by the surveyor, one of which shall be filed with the county clerk of the county wherein the town is situated, one must be deposited with the judge, and one must be deposited with the justice of the peace resident in or nearest to such town.

3517. (§ 5103.) *Plats, what to contain.*—These plats are public records, and must be accompanied with a copy of the field-notes, and the county clerk shall make a record thereof in a book to be kept by him for that purpose. The surveyor must number the blocks, as divided by the roads and streets opened at the time

of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said townsite surveyed as herein provided, which said numbers are a sufficient description of any parcel of land in said plat when mentioned by reference to such town plats.

3518. (§ 5104.) *Notice of survey to be given.*—Before proceeding to make such survey, at least ten days' notice must be given by the judge, by posting within the limits of such townsite not less than five written or printed notices of the time when such survey shall commence, and by publication thereof in a newspaper published in such town, if one there be. The survey of said town lands must be made to the best advantage, and at the least expense to the holders and claimants thereof; and the said judge is hereby authorized to receive bids for such surveying, and to let the same by contract to the lowest competent bidder.

3519. (§ 5105.) *What dedicated to public use.*—All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this article, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county clerk, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city.

3520. (§ 5106.) *What plat must show.*—Such plat must show the same matters as are contained in section 3460 (5001), chapter VI., of this title, and must be made, filed and kept in the same manner as prescribed in § 3473 (5008), chapter VI., of this title.

3521. (§ 5107.) *Assessment for expenses.*—Each lot or parcel of said land having thereon valuable improvements, or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, must be rated and assessed by the judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area must be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area must be rated and assessed at the sum of two dollars; and each lot and parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area must be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half an acre in area must be assessed at the rate of two dol-

lars and fifty cents for each half an acre, or fractional part over half an acre; and every lot or parcel of land inclosed, which may not be otherwise improved, or uninclosed, claimed by any persons, corporation or association, must be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where, upon one parcel of land, there are two or more separate buildings, occupied or used ordinarily as dwellings, or for business purposes, each such building, for the purposes of this section, is considered as standing on a separate lot of land, but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said town lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry, and purchase, and the costs and expenses attendant upon the making of such survey and recording thereof.

3522. (§ 5108.) *Surplus, what to be done with.*—Any sum of money remaining, after defraying all the necessary expenses of location, entry, surveying, platting, and recording of lands, and the expenses of the judge hereinafter mentioned, must be deposited in the county treasury, to the credit of the fund of each particular town, and kept separate by the county treasurer, to be paid out by him only on the written order of such judge, until after the expiration of the time for a final settlement of the affairs of such town lands, as hereinafter provided, at which time any and all balances of moneys so remaining to the credit of each town shall be transferred by such county treasurer to the school fund of the particular school district in which said town is situated.

3523. (§ 5109.) *Claimants to make affidavits.*—Every person, corporation, or association, claimant of any town lot or parcel of land within the limits of such townsite, must present to the judge, within six months after the plat has been filed in the office of the county clerk, his, her, or their affidavit, verified in person, or by duly authorized agent or attorney, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof, as against all other persons, to the best of his knowledge and belief, to which must be attached a copy of so much of the plat of the townsite as will fully exhibit the particular lot or parcel of land so claimed, with the abutments; and every such claimant, at the time of filing such affidavit, must pay to such judge such sum of money as such judge shall thereon certify to be due for the assessment mentioned in § 3521 (5107), of this article, together with the further sum of five dollars, to be appropriated to the payment of the expenses incurred in carrying

out the provisions of this article; and the judge must thereupon give to such claimant a certificate containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The judge must procure a bound book for each town in his county, wherein he must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lots claimed.

3524. (§ 5110.) *Additional assessments to pay expenses.*—If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the judge must estimate the deficiency, and assess such deficiency pro rata upon all the lots and parcels of lands in such town, and declare the same upon the basis set down in § 3521 (5107) of this article, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued.

3525. (§ 5111.) *Deeds to be delivered in six months. Adverse claims.*—At the expiration of six months after the issuance of the certificate mentioned in the preceding section, if there has been no adverse claim filed in the meantime, the judge must make, execute, acknowledge, and deliver to each claimant, or to his, her, or their heirs, administrators, or assigns, a good and sufficient deed of the premises described in the application of the claimant originally filed. No conveyance of any such lands, made as in this article provided, concludes the rights of third persons; but such third persons may have their actions in the premises to determine the alleged interest in such lands against such grantee, his heirs, or assigns, to which they may deem themselves entitled either in law or equity. No action for the recovery of the possession of such premises, or any portion thereof, must be maintained in any court against the grantee named therein, or against his, her or their assigns, unless such action is commenced within two years after such deeds have been filed for record in the office of the county clerk of the county where such lands are situated. Nothing herein must be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate when such action is barred by law at the time of the passage of this code.

3526. (§ 5112.) *Mining claims.*—Whenever mining claims have been located and held bona fide for mining purposes, such mining rights, according to the metes and bounds located and claimed, must not in any manner be affected by the provisions of this article; nor must any sale be made, nor any title be conveyed

by reason of any sale or pretended sale of such lands so claimed for mining purposes until after the occupancy of such mining claims has been abandoned by the holders thereof.

3527. (§ 5113.) *Adverse claims. Actions for possession.*—In all cases of adverse claims or disputes arising out of conflicting claims to lands or boundary lines, the adverse claimants may submit the decision thereof to the judge by an agreement in writing, specifying particularly the subject matter in dispute, and may agree that his decision shall be final; in which case the said judge may hear the proofs, and must execute a deed in accordance therewith; but in all other cases of adverse claim, the party out of possession must commence his action in a court of competent jurisdiction within six months after the filing of the town plat in the office of the county clerk. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the judge, who must thereupon stay all proceedings in the matter of granting any certificate or deed until the final decision of such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the judge must execute and deliver a deed of such premises in accordance with the judgment. In case no such action be commenced within the time herein prescribed, the judge must deliver his deed to the party in possession, as provided in § 3525 (5111) of this article.

3528. (§ 5114.) *Notice of filing plat.*—The judge must give public notice, by advertisement, for four weeks in some newspaper published in the county, if one there be, and if there be no newspaper published in said county, then by not less than five written or printed notices posted within the limits of such townsite, that the plat thereof has been filed in the county clerk's office; and if any person, company or association, or other claimants of lands in such town fails, neglects or refuses to make application to the judge for a deed, and to pay the sum specified, within six months after the filing of said plat, the judge must enter on his book the names of all such persons, with a description of the property or premises, and certify the same as delinquent for the amount of assessments certified to by such judge as due under § 3521 (5107), of this article; and at the expiration of thirty days after making such entries, if such application be not made and such assessment be not paid, the judge must advertise all such lots and parcels of land for sale in the same manner as real estate is required to be advertised under execution.

3529. (§ 5115.) *Sale of delinquent lands.*—At the time of sale mentioned in said advertisement, the judge must sell all such parcels of land so remaining delinquent, by public auction, to the highest bidder for cash, at some public place within the limits of said townsite; and he must give to the purchaser at such sale a certificate of his purchase, setting forth therein a description of

the premises sold, the amount paid, and that the same is subject to redemption, as prescribed in the next section; but no sale must be made for less than the whole amount of assessments, and the costs of making the sale, which costs must be divided pro rata among the several parcels offered for sale.

3530. (§ 5116.) *Redemption.*—At any time within six months after such sale the original claimant is entitled to redeem such premises, by paying to the purchaser, or to the judge for the purchaser, double the whole amount of the purchase money; but in case no redemption be made, the purchaser, his heirs or assigns, is entitled to demand and receive from the judge a deed of such premises, which deed is absolute as against the parties delinquent, and entitles the grantee, his heirs, or assigns, to a writ of assistance from the district court having jurisdiction of the premises.

3531. *Sale of unoccupied or unclaimed lands.*—If there be any unoccupied or vacant unclaimed lands within the limits of such city or townsite, the judge may cause the same to be laid out and surveyed into suitable blocks and lots, and must reserve such portions as may be deemed necessary for public squares, churches, school house lots, parks and levees, and cause all necessary roads, streets, lanes and alleys to be laid out through the same and dedicated to public use; and the judge may sell the same in suitable parcels to possessors of adjoining lands residing thereon, or to other persons residents of said town, at a price not less than ten dollars per lot; and in case two or more claimants apply for the same lot or lots, he must sell the same by auction to the highest bidder for cash. If any of such lots remain unsold at the end of six months after the filing of the town plat, the said judge must sell said unclaimed lots, on application, at public auction to the highest bidder for cash, and give deeds therefor to the several purchasers. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 130.)

3532. (§ 5118.) *School lots.*—All school lots and parcels of land reserved for school purposes, as aforesaid, by order of the judge, must be conveyed to the school trustees of the school district in which such town is situate, without cost or charge of any kind whatever.

3533. (§ 5119.) *Vacancy in office of judge.*—In case a vacancy occurs from any cause in the office of district judge during the pendency of any of the proceedings to be taken under this article, upon the election or appointment of a successor, it is the duty of the county clerk to make out a certificate, under seal, showing the facts and name of such successor, and file the same in his office, and record such certificate in a book of deeds, and attach the original to the townsite book in his office.

3534. (§ 5120.) *Clerical work must be performed by clerk of district court.*—All the clerical work under this article must be performed by the clerk of the district court, and the fees received therefor paid into the county treasury.

3535. (§ 5121.) *Accounts of judge.*—Every district judge, when fulfilling the duties imposed upon him by the act of congress aforesaid, and by this article must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the county treasurer of his county, and at the end of one year from the time when the town plat of any town is filed in the county clerk's office, he must settle up all the affairs pertaining to said town, and pay over to the county treasurer all moneys belonging to said town, for the use and benefit of the school district in which said town may be situate. If any claims to lands in such town are the subject of litigation, the same must be finally settled by such judge, whenever the final judgment has been rendered.

3536. (§ 5122.) *Deposit of books with county clerk, when.*—Whenever the affairs of any such town shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of his county, to be thereafter kept in the custody of the county clerk as public records.

3537. (§ 5123.) *Informality not to invalidate.*—No mere informality, failure, or omission, on the part of any of the persons or officers named in this article, invalidates the acts of such person or officer, but every certificate or deed granted to any person, pursuant to the provisions of this article, is conclusive evidence that all preliminary proceedings in relation thereto have been correctly taken and performed.

3538. (§ 5124.) *City or townsite on school lands.*—When the lands of such city or town are on a school section or subdivision thereof, and are owned by the state, the council may procure title, and purchase the same from the state, and dispose of the same in the manner provided in this article, for disposing of lands purchased from the United States.

3539. (§ 5125.) *Notice of entry.*—Immediately after such survey and plat has been made, or if a survey and plat has been made previous to the entry according to the provisions of § 2013,* of this chapter, then immediately after the entry of the lands at the proper land office as provided in § 2011* of this chapter, the corporate authorities or the district judge, as the case may be, shall cause a notice to be published in all the newspapers published in such town, or if no newspaper be published in such town, then by advertisement posted up in twelve of the most public

* Note.—These numbers refer to sections of compiled statutes which were not re-enacted in the Codes.

places in such town, for at least two months, giving notice of such entry, and requiring every claimant or claimants of any town lot or lots, to file in the office of such incorporate authorities or in the office of the clerk of the district court of such district judge, in the county in which such townsite is situated, as the case may be, a statement of his or their claims within two months from the date of the first publication of such notice. [*Act approved March 2, 1893.*]

3540. (§ 5126.) *Statement of claim.*—Such statement shall be made in writing, signed by the party or parties making the same, and verified by the affidavit of such party or parties, and shall be recorded at length in a well bound book, to be provided and kept for such purpose by such incorporate authorities or clerk of the district court of such district judge, as the case may be. Such statement shall specify the grounds of such claims, particularly describing the lot or lots claimed, the date as near as may be of the occupation of such lot or lots, and by whom; what improvements have been made on such lot or lots and the value thereof; and that such lot or lots are now actually possessed and occupied by such a claimant, or that the right to such occupation is in the claimant, if such lot or lots are occupied by another. [*Act approved March 2, 1893.*]

3541. (§ 5127.) *Proof of claim.*—All claimants of any lot or lots in any townsite pre-empted under the provisions of this chapter shall, within six months from and after the expiration of the notice mentioned and provided for in § 3539 (5125) of this chapter, make proof of such claim and of the facts contained in such statement before the corporate authorities aforesaid, or the district judge, as the case may be, and pay the price hereinafter fixed upon such lot or lots, and no proof shall be permitted to be made after the expiration of the time prescribed in this section; *Provided*, That the district judge, at chambers, shall and he is hereby authorized to appoint, by appropriate entry upon the minutes of his court, some suitable person, who is a notary public, referee, to hear and take down in writing any and all proof of such claim, and of the facts contained in such statement, and to prepare all deeds to such lot or lots so claimed and proven, and report the same to said district judge, and thereupon it shall be the duty of said district judge to examine the proofs and execute deeds to the claimant or claimants; as provided for in § 5129 of this chapter as amended in § 3543 (5129) of this act. [*Act approved March 2, 1893.*]

3542. (§ 5128.) *Claimant of three or more lots.*—The number of lots which any one claimant shall be entitled to pre-empt, under the provisions of this chapter, shall be two, not exceeding in area four thousand two hundred square feet each, and such additional lot or lots upon which such said claimant may have sub-

stantial improvements of the value of not less than two hundred and fifty dollars. When any claimant shall make application to enter more than two lots, he shall prove, in addition to other matters of proof required by this chapter, to the satisfaction of said incorporate authorities or district judge, as the case may be, by the affidavit of one or more reliable witnesses, the nature, character and actual cash value of the improvements upon such additional lot so sought to be entered by him; *Provided*, said district judge may, and he is hereby authorized to, appoint a referee to take such proof, by affidavit, as provided in this act. [*Act approved, March 2, 1893.*]

3543. (§ 5129.) *Award of lots.*—The said district judge or corporate authorities, as the case may be, shall proceed to award the lot or lots claimed, as provided for in this chapter, and for that purpose shall, as soon as practicable, and as near as practicable in the order of time of the filing of statements of claims, examine each and every claim, as herein provided, and hear such proof as the claimant or claimants may submit, to establish his or their claims thereto; and if the same shall be found to comply with the provisions of this chapter, and no conflicting claim shall have been filed, the said district judge or corporate authorities, as the case may be, shall, upon payment of the purchase price, as hereinafter prescribed, proceed forthwith to make such claimant or claimants a good and sufficient deed for such lot or lots. [*Act approved March 2, 1893.*]

3544. (§ 5130.) *Fees of referee.*—The fees of such referee shall be, in case such claim or claims are not contested, five dollars for taking and reporting such proofs and preparing such deeds for each town lot, and in contested cases the fees of such referee shall be ten dollars for each lot. [*Act approved March 2, 1893.*]

3545. (§ 5131.) *Hearing on contest.*—In all cases where there is a dispute or contest in regard to the right to the deed to any lot or lots, the district judge or corporate authorities, as the case may be, shall hear the testimony relating thereto, at such time as they may fix therefor, and after two days' notice of such time and place of hearing given to each and every contestant, they shall proceed to hear and decide such claims in accordance with the principles of right and justice and the provisions of this chapter; and in case there shall be no appeal taken from such decision, as hereinafter provided, then after ten days from the rendering of such decision, the said district judge or corporate authorities, as the case may be, shall proceed to make a deed, as provided for in this act, to the person or persons to whom the lot or lots may have been awarded; *Provided*, The corporate authorities or district judge, as the case may be, may adjourn from time to time, as they may deem just, for the fair adjudication of such claim or claims:

and provided further, That said district judge may, and he is hereby authorized to, appoint some suitable person, who is a notary public, referee, to hear such contests and take all the proofs in writing and report the same to the district judge, who shall thereupon and upon such proofs adjudicate and determine the rights of the parties, as herein provided. [*Act approved March 2, 1893.*]

3546. (§ 5132.) *Appeal.*—In case any claimant or claimants of any lot or lots which may have been awarded, as provided in § 3543 (5129) of this act, shall feel aggrieved by such decision, such claimant or claimants may take an appeal to the district court of the county in which the same is located. Such appeal may be made by filing with the clerk of the district court a notice in writing of such appeal, and a complaint in the matter of an action for the recovery of the possession, or, if the party be in possession, to establish his right to the same; and a copy of such notice and complaint shall be served upon each and all of the parties contesting, and in all respects the pleadings and proceedings thereafter shall be governed by the same rules applicable to actions originally commenced in the district court. [*Act approved March 2, 1893.*]

3547. (§ 5133.) *Effect of appeal.*—When a notice of appeal to the district court shall have been filed with the clerk of the district court, the power to make a deed, as provided for in § 3541 (5127) of this act, shall be suspended until the appeal is dismissed, or finally determined; and upon such dismissal or final determination, such judge or corporate authorities aforesaid, shall make a deed to the party found by such determination to be entitled thereto. [*Act approved March 2, 1893.*]

3548. *Vacation of plats in abandoned townsites.*—That when there shall have been filed in the office of the County Clerk in any County in this State, a plat of any village or townsite and such village or townsite shall not contain any post-office, store or other business house, and the lands upon which the same is situated shall be owned by one or more persons, the County Commissioners of the County in which such village or townsite is situated, may, upon petition of the persons owning all the real estate occupied by such village, upon such conditions as may be reasonable, vacate the lots, streets and alleys, parks and boulevards in such village, or townsite and the designation of such property shall be made by metes and bounds and the same shall be assessed accordingly. [*Act approved February 7, 1907. § 1.*] (10th Sess. Chap. 6.)

3549. *Vacation of parks, boulevards and public places in unincorporated towns.*—Whenever a petition signed by freeholders, owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this State, shall be presented to the Board of County Commissioners of the county in which

such townsite is situated, praying said board to vacate any park, boulevard, or other public place, bordering on said street and the adjoining property and not used for road or highway purposes, which park, boulevard, or public place, has been dedicated to public use, such board shall hear said petition, and, if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall by order of the board, duly entered upon its minutes, declare such park, boulevard or public place vacated, and, thereupon, the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto pass with conveyance of said lots. [*Act approved March 1, 1907, § 1.*] (*10th Sess. Chap. 60.*)

PART V.

THE DEFINITION AND SOURCES OF LAW, EFFECT AND PUBLICATION OF THE CÔDES, AND THE EXPRESS REPEAL OF STATUTES.

- TITLE I. DEFINITION AND SOURCES OF THE LAW.
- II. EFFECT OF THE CODES.
- III. PUBLICATION OF THE CODES.
- IV. EXPRESS REPEAL OF STATUTES.
- V. CODE COMMISSIONER AND PRINTING OF STATUTES.

TITLE I.

DEFINITION AND SOURCES OF THE LAW.

Section 3550. Definition of law.

“ 3551. *How expressed.*

“ 3552. *Common law, when rule of decision.*

3550. (§ 5150.) *Definition of law.*—Law is a solemn expression of the will of the supreme power of the state.

3551. (§ 5151.) *How expressed.*—The will of the supreme power is expressed:

1. By the constitution.
2. By statutes.

3552. (§ 5152.) *Common law, when rule of decision.*—The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution or laws of this state, or of the codes, is the rule of decision in all the courts of this state.

Fordham v. N. P. R. Co., 30 Mont. 431; 76 Pac. 1043.

Finlen v. Heinze, 28 Mont. 548; 73 Pac. 123.

State v. Donlan, 32 Mont. 263; 80 Pac. 246.

Lean v. Givens, 146 Cal. 742; 81 Pac. 128.

TITLE II.

EFFECT OF THE CODES.

Section 3553. Construction of the codes with relation to the laws passed.

“ 3554. *Construction of codes with relation to each other.*

“ 3555. *Conflict between titles, which to prevail.*

“ 3556. *Conflicts between chapters, which to prevail.*

“ 3557. *Conflicts between articles, which to prevail.*

“ 3558. *Conflicting sections of the same title, which to prevail.*

3553. (§ 5160.) *Construction of the codes with relation to laws passed.*—With relation to the laws passed at the session of the legislative assembly at which the Political Code, Civil Code, Code of Civil Procedure, and Penal Code, are passed, such codes must be construed as though each had been passed on the last day of the session.

Steele v. Gilpatrick, 18 Mont. 454; 45 Pac. 1089.

Dowty v. Pittwood, 23 Mont. 113; 57 Pac. 727.

3554. (§ 5161.) *Construction of the codes with relation to each other.*—With relation to each other, the provisions of the four codes must be constructed (except as in the next two sections provided) as though all such codes had been passed at the same moment of time, and were parts of the same statute.

Steele v. Gilpatrick, 18 Mont. 454; 45 Pac. 1089.

State v. Donlan, 32 Mont. 264; 80 Pac. 246.

3555. (§ 5162.) *Conflicts between titles, which to prevail.*—If the provisions of any title conflict with or contravene the provisions of another title, the provisions of each title must prevail as to all matters and questions arising out of the subject matter of such title.

Hilburn v. St. P. R. Co., 23 Mont. 230; 58 Pac. 511.

In re Pomeroy, 33 Mont. 72; 81 Pac. 630.

Butte v. Weston, 29 Mont. 131; 74 Pac. 417.

F. F. M. Co. v. Jenkins, 33 Mont. 422; 84 Pac. 76.

In re O'Brien, 29 Mont. 540; 75 Pac. 198.

London Bank v. Parrott, 125 Cal. 481; 58 Pac. 164.

State v. Donlan, 32 Mont. 264; 80 Pac. 246.

3556. (§ 5163.) *Conflicts between chapters, which to prevail.*—If the provisions of any chapter conflict with or contravene the provisions of another chapter of the same title, the provisions of each chapter must prevail as to all matters and questions arising out of the subject matter of such chapter.

State v. Donlan, 32 Mont. 264; 80 Pac. 246.

Flowerree v. L. & C. Co., 33 Mont. 39; 81 Pac. 400.

3557. (§ 5164.) *Conflicts between articles, which to prevail.*—If the provisions of any article conflict with or contravene the

provisions of another article of the same chapter, the provisions of each article must prevail as to all matters and questions arising out of the subject matter of such article.

State v. Donlan, 32 Mont. 264; 80 Pac. 246.

3558. (§ 5165.) *Conflicting sections of the same title, which to prevail.*—If conflicting provisions are found in different sections of the same chapter or article, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter or article.

State v. Rotwitt, 17 Mont. 49; 41 Pac. 1006.

In re Scheuer's Estate, 31 Mont. 617; 79 Pac. 248.

State v. Courtney, 27 Mont. 384; 71 Pac. 309.

Clark v. Maher, 34 Mont. 400; 87 Pac. 274.

State v. Donlan, 32 Mont. 264; 80 Pac. 246.

TITLE III.

PUBLICATION OF THE CODES.

3559. (§ 5170.) *Codes not published as part of the statutes.*—The codes must not be published as part of the statutes, but provision must be made by law for their publication in separate form.

TITLE IV.

EXPRESS REPEAL OF STATUTES.

Section 3560. *Repeal of repealed statutes.*

“ 3561. *Certain acts remain in force.*

“ 3562. *When codes go into effect.*

“ 3563. *Certain acts to be compiled.*

“ 3564. *Construction of conflicting acts.*

“ 3565. *Same.*

“ 3566. *Enumeration of acts in force.*

3560. (§ 5180.) *Repeal of repealed statutes.*—The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

Dowty v. Pittwood, 23 Mont. 114; 57 Pac. 727.

3561. (§ 5181.) *Certain acts remain in force.*—An Act entitled an act to create the office of county auditor, approved March 7, 1891, and all acts of the third and fourth sessions of the legislative assembly of the state of Montana shall be and remain in full force and effect in like manner as if enacted after the adoption of the four codes, namely: The Code of Civil Procedure, the Penal Code, the Civil Code and the Political Code, notwithstanding the provisions of §§ 3553 (5160) and 3554 (5161) of the Political Code, nor any provision of either of said

codes to the contrary; and all acts of the fourth session of the legislative assembly amending or repealing any provision of either of said Codes, shall be observed in compiling and printing thereof, so that such repealed provision shall be omitted and amendments inserted in lieu of the original provision. [*Act approved March 13, 1895.*]

Campana v. Calderhead, 17 Mont. 548; 44 Pac. 83. The act, approved March 5, 1889, establishing a series of text books in the public schools, was repealed by sections 5181 and 5182 of this code.

Steele v. Gilpatrick, 18 Mont. 454; 45 Pac. 1089.

Jobb v. Meagher Co., 20 Mont. 424; 51 Pac. 1034.

Proctor v. Cascade Co., 20 Mont. 316; 50 Pac. 1017.

Penwell v. Commissioners, 23 Mont. 357; 59 Pac. 169.

King v. Elling, 24 Mont. 478; 62 Pac. 786.

State v. Dickinson, 26 Mont. 393; 63 Pac. 469.

State v. Mayor, 30 Mont. 343; 76 Pac. 760.

3562. (§ 5182.) *When codes go into effect.*—The said four codes, and all amendments thereof, adopted by the fourth session of the legislative assembly of the state of Montana, shall go into force and effect at 12 o'clock noon on the first day of July, A. D. eighteen hundred and ninety-five, and the same, together with the acts of the third and fourth sessions of the legislative assembly, shall constitute the public statutes of Montana. And all other statutes of this state of a general nature existing and in force theretofore, that is, prior and up to the time designated for the said codes to take effect, are hereby repealed, abrogated and superceded, unless continued in force by incorporation into said codes, and this repeal provision shall take effect at the time said codes go into force and effect as aforesaid, subject, however, to the following conditions:

1. Nor shall the foregoing repeal provision apply to, abrogate or affect any statute or resolution making appropriation of public moneys, or creating or providing for the payment of public obligations, or from raising revenue therefor, nor abridge, abolish, or impair any vested right or rights, accruing or accrued; nor shall such repeal change the force and effect of any act done or judgment rendered, or suit or proceeding had or commenced under the law as it stood prior to the taking effect of the provisions of this section, but all such rights and liabilities may be enforced and the provisions continued conforming the same as far as practicable to the provisions and remedies prescribed by said codes; nor shall such repeal in any manner abridge or affect the term, tenure or emolument of any officer during the term for which the incumbent may have been appointed or elected unexpired when the codes take effect.

2. All offenses committed and all penalties or forfeitures incurred by virtue of any statute embraced in the foregoing repeal provision may be enforced, prosecuted or punished as the case may require, subject to the same limitation, if any, prescribed when such offense was committed or such penalty or forfeiture was incurred.

3. The arrangement and classification of the several parts of said codes have been made for the purpose of convenience and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom, nor shall annotations be deemed any part of the statutes. [*Act approved March 13, 1895.*]

Campana v. Calderhead, 17 Mont. 548; 44 Pac. 83.

Chicago Co. v. O'Marr, 18 Mont. 568; 46 Pac. 809.

Kimpton v. Jubilee P. Co., 22 Mont. 108; 55 Pac. 918.

Dowty v. Pittwood, 23 Mont. 117; 57 Pac. 728.

King v. Elling, 24 Mont. 478; 62 Pac. 786.

State v. Dickinson, 26 Mont. 394; 68 Pac. 470.

M. I. Co. v. Winne, 20 Mont. 35; 49 Pac. 451.

3563. (§ 5183.) *Certain acts to be compiled.*—That all acts and parts of acts enumerated in this act are, and the same are hereby declared to be, parts of the Political Code, the Civil Code, the Code of Civil Procedure, and the Penal Code respectively, and the commissioner appointed to codify and compile the said codes is hereby authorized and directed to place and arrange the said acts and parts of acts in their proper places in the said codes. [*Act approved March 13, 1895.*]

Steele v. Gilpatrick, 18 Mont. 455; 45 Pac. 1090.

King v. Elling, 24 Mont. 478; 62 Pac. 786.

Helena v. Rogan, 27 Mont. 137; 69 Pac. 710.

State v. Dickinson, 26 Mont. 394; 68 Pac. 469.

3564. (§ 5184.) *Construction of conflicting acts.*—If any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with, any of the provisions of the said codes enumerated in § 3563 (5183), of this act, or any of them, the acts or parts of acts herein enumerated are to be considered and construed as amendments to the respective code or codes, whose provisions they are in conflict with, or are inconsistent with, it being intended hereby that all of the acts or parts of acts herein enumerated shall be the law of the state of Montana, upon the respective subjects, so far as they are inconsistent with the provisions of the said codes, or any of them, except as herein provided. [*Act approved March 13, 1895.*]

Steele v. Gilpatrick, 18 Mont. 455; 45 Pac. 1090.

Home L. A. v. Nolan, 21 Mont. 208; 53 Pac. 739.

Penwell v. Commissioners, 23 Mont. 357; 59 Pac. 169.

King v. Elling, 24 Mont. 478; 62 Pac. 786.

Helena v. Rogan, 27 Mont. 137; 69 Pac. 710.

State v. Dickinson, 26 Mont. 394; 68 Pac. 470.

Jobb v. Meagher Co., 20 Mont. 429; 51 Pac. 1035.

Delmoe v. Long, 35 Mont. 156; 88 Pac. 783.

3565. (§ 5185.) *Same.*—That if any of the acts or parts of acts herein enumerated are in conflict with, or are inconsistent with, any act or acts passed by the fourth legislative assembly of the state of Montana, the acts or parts of acts passed by the fourth legislative assembly shall be considered and construed as repealing such acts or parts of acts herein enumerated. [*Act approved March 13, 1895.*]

Steele v. Gilpatrick, 18 Mont. 455;
45 Pac. 1090.

King v. Elling, 24 Mont. 479; 62 Pac.
786.

Western Ranches v. Custer Co., 28
Mont. 283; 72 Pac. 661.

State v. Dickinson, 26 Mont. 394; 68
Pac. 470.

Jobb v. Meagher Co., 20 Mont. 429;
51 Pac. 1035.

3566. (§ 5186.) *Enumeration of acts in force.*—The following acts are, and are hereby declared to be, in full force and effect, except as herein otherwise provided:

“An act providing for the great seal of the state of Montana, and describing the same,” approved March 9, 1893.

“An act apportioning the state of Montana into representative districts,” approved March 10, 1893.

“An act to prevent the corrupt solicitation of members of the legislative assembly, and other public officers,” approved February 23, 1893.

“An act to protect state property,” approved March 1, 1893.

“An act to provide for the sale of timber lands belonging to the state,” approved March 7, 1893.

“An act to amend § 2 of an act entitled ‘An act to provide for the selection, location, appraisal, sale and leasing of state lands,’ approved March 16, 1891,” approved March 9, 1893.

“An act to amend § 42, first division of the code of civil procedure, compiled statutes of Montana,” approved March 9, 1893.

“An act to authorize the state board of education to select lands from the school lands and other public lands of the state for the uses and purposes of the educational institutions of the state,” approved March 10, 1893.

“An act giving consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of the United States court house, postoffices and every other like purpose,” approved March 9, 1893.

“An act to repeal an act with reference to estrays upon the public domain,” approved February 3, 1893.

“An act entitled ‘An act to create a lien for the services of stock horses,’” approved February 25, 1893.

“An act with reference to driving stock into or through the state of Montana,” approved March 7, 1893.

“An act to prohibit any person or persons from driving horses, mules or cattle from their usual and customary range,” approved March 9, 1893.

“An act to amend an act entitled ‘An act to amend § 1950, fifth division of the compiled statutes of Montana, concerning school bonds,’” approved February 14, 1893.

“An act concerning the duties of school trustees,” approved February 25, 1893.

“An act to amend § 1908, fifth division of the compiled statutes of the state of Montana,” approved approved March 2, 1893.

"An act to amend §§ 3 and 4 of an act entitled 'An act concerning the compensation of county, district and township officers,' approved March 6, 1891," approved March 2, 1893.

"An act to amend an act entitled 'An act concerning the compensation of county, district and township officers,' " approved March 9, 1893.

"An act relative to the appointment of special deputies, marshals or policemen by sheriffs, mayors and other persons authorized by law to make such appointments, and to prescribe penalties for the violation thereof," approved February 13, 1893.

"An act placing the books, papers and other property of the historical society of the state of Montana under control of the state, and providing for the appointment of trustees to manage the same," approved March 2, 1893.

"An act to transfer the miscellaneous division of the Montana state library to the library of the historical society of the state of Montana and to the care and custody of its officers." approved March 9, 1893.

"An act entitled an act to amend §§ 58 and 59, of act entitled 'An act concerning the revenue,' approved March 6, 1891," approved February 24, 1893.

"An act to amend § 167 of an act of the second legislative assembly of the state of Montana, entitled 'An act concerning revenue,' " approved March 8, 1893.

"An act entitled an act to amend an act entitled 'An act to provide an index to district court records, and providing for keep in the same,' approved February 23, 1891," approved February 27, 1893.

"An act regulating the hours of labor of stationary engineers, and fixing penalties for violation thereof," approved February 16, 1893.

"An act to amend an act entitled 'An act to provide for the appointment of a private secretary to the governor,' approved March 13, 1889," approved March 1, 1893.

"An act to amend § 473, second division of the compiled statutes of Montana relating to legacies," approved March 7, 1893.

"An act relative to sureties on undertakings and bonds," approved March 9, 1893.

"An act to punish administrators, executors or guardians failing to render accounts or file reports required by law," approved February 16, 1893.

"An act to amend an act entitled 'An act concerning the storage of gunpowder and other high explosives,' approved March 1, 1893, and for the better protection of unincorporated towns and villages," approved March 8, 1893.

"An act to provide for the protection to game, fur-bearing animals, birds and fish," approved March 1, 1893.

"An act to amend an act entitled 'An act to provide for the registration of the names of electors and to prevent frauds at elections,' approved March 8, 1889," approved March 8, 1893.

"An act to provide the conditions upon which foreign corporations may do business in this state," approved March 8, 1893.

"An act entitled 'An act to amend § 513 of the fifth division, general laws, of the state of Montana, chapter XXV,' approved March 7, 1893.

"An act authorizing corporations to change their corporate names," approved March 2, 1893.

"An act to provide for the incorporation of companies to do the business of accident insurance on the assessment plan, and to control such companies of this state and of other states doing business in this state," approved March 8, 1893.

"An act to amend § 586 of the fifth division, compiled statutes of Montana," approved March 2, 1893.

"An act to amend an act entitled 'An act concerning saving banks and trust deposit and security associations,' approved March 8, 1893.

"An act to amend §§ 446, 467, 468 and 469 of chapter XXV. of the fifth division of the compiled statutes of Montana of 1887 in relation to the term of existence of corporations," approved March 2, 1893.

"An act to amend chapter XXII. fifth division of compiled statutes of Montana, relating to municipal corporations and amendments thereto, approved September 18, 1887, and also amendments thereto, approved March 14, 1889," approved March 7, 1893.

"An act to amend §§ 2015, 2016, 2017, 2018, 2019, 2020 2021, 2022, 2023, of chapter CXIX. fifth division compiled statutes of Montana, concerning towns and villages, sites and plats," approved March 2, 1893.

"An act to enable counties and incorporated cities to make contracts for the abatement of injurious and unhealthy smoke and fumes, and to issue bonds and to dispose of the same for that purpose," approved March 8, 1893.

"An act to authorize the amendment of certificates of incorporation of railroad corporations," approved February 24, 1893.

"An act to require railway corporations when they fence their right of way, or where they have already fenced it, to leave or make certain openings therein and to provide a penalty for the violation thereof," approved March 2, 1893.

"An act relating to certain contracts for the conditional sale, lease or hire of railroad and street railways equipment and rolling stock, and providing for the recording thereof," approved March 2, 1893.

"An act regulating the sale and redemption of transportation tickets of common carriers," approved March 13, 1893.

"An act to allow the construction and maintenance of toll roads and toll bridges and to regulate the same," approved March 2, 1893.

"An act entitled 'An act relating to the purchase, consolidation, lease, sale and aiding railroads in certain cases and ratification of private sales and consolidation,' " approved March 4, 1893.

"An act to provide for the appointment, terms of office, powers, duties, and compensation of the state board of education," approved March 1, 1893.

"An act to create a state board of charities and reform and define its duties," approved March 9, 1893.

"An act to establish a bureau of agriculture, labor and industry, and provide for the appointment of a commissioner thereof, and define his duties," approved February 17, 1893.

"An act providing for the location and establishment of the agricultural college of the state of Montana, and an agricultural experimental station in connection therewith, enumerating its objects and purposes, dedicating lands for the use of the same, providing for the government and control thereof, and accepting and adopting the provisions, donations and benefits contained in the acts of congress relating thereto," approved February 16, 1893.

"An act to establish, locate, maintain and govern the university of the state of Montana," approved February 17, 1893.

"An act to provide for the location, incorporation, establishment, maintenance, management and support of the Montana School of mines," approved February 17, 1893.

"An act to establish a state normal school at Dillon, in the county of Beaverhead, state of Montana," approved February 23, 1893.

"An act to create a school for the deaf and dumb, and providing for the location thereof, and also providing for the education and maintenance of the blind and feeble-minded therein," approved March 1, 1893.

"An act to provide for the establishment and location of a state reform school, and to appropriate money therefor," approved March 1, 1893.

"An act to provide a home for the care and education of orphans, foundlings and destitute children, and to provide for its maintenance and management," approved March 2, 1893.

"An act to locate the state prison of Montana, and to provide for the erection and repairs of prison buildings, and to appropriate money therefor," approved March 3, 1893.

"An act to create the county of Flathead, to define its boundaries and provide for its organization and government," approved February 26, 1893.

"An act to create the county of Valley, define its boundaries and provide for its organization," approved February 6, 1893.

"An act to create the county of Teton, to define its boundaries and to provide for its organization and the election of the officers thereof," approved February 7, 1893.

"An act to amend an act entitled 'An act to create the county of Ravalli, to define its boundaries and to provide for its organization,' approve the——day of February, 1893," approved March 2, 1893.

"An act to create the county of Granite, to define its boundaries and to provide for its organization and government," approved March 2, 1893.

"An act providing for the transcribing of county records of segregated counties," approved March 2, 1893.

"An act entitled, 'An act to create the office of county auditor,'" approved March 7, 1891.

"An act to provide for the care, keeping, maintenance, custody and control of convicts for the state," approved March 10, 1893.
[Act approved March 13, 1895.]

State v. Rotwitt, 17 Mont. 41; 41 Pac. 1004.

Steele v. Gilpatrick, 18 Mont. 455; 45 Pac. 1090.

Jobb v. Meagher Co., 20 Mont. 424; 51 Pac. 1034.

State v. Railway Companies, 21 Mont. 221; 53 Pac. 623.

Penwell v. Commissioners, 23 Mont. 357; 59 Pac. 169.

King v. Elling, 24 Mont. 478; 62 Pac. 786.

State v. Dickinson, 26 Mont. 393; 68 Pac. 470.

Chowen v. Phelps, 26 Mont. 531; 69 Pac. 56.

In re O'Brien, 29 Mont. 540. 75 Pac. 198.

Delmoe v. Long, 35 Mont. 156; 88 Pac. 783.

TITLE V.

CODE COMMISSIONER AND PRINTING OF STATUTES.

- Section 3567. *Appointment of Code Commissioner.*
 " 3568. *Date of appointment and term of office.*
 " 3569. *Oath of office.*
 " 3570. *Division of codes and index.*
 " 3571. *Matter to be included.*
 " 3572. *Identification of statutes.*
 " 3573. *Powers of commissioner.*
 " 3574. *Compensation of commissioner.*
 " 3575. *Annotations.*
 " 3576. *Form of publication.*
 " 3577. *Contract for printing.*
 " 3578. *Same.*
 " 3579. *Payment of publisher.*
 " 3580. *Bond of contractor.*
 " 3581. *Distribution of revised codes.*
 " 3582. *Appropriation.*

3567. *Appointment of Code Commissioner.*—That the Governor of the State is hereby authorized to appoint some competent and qualified person with full power and authority to compile and revise the Political Code, Civil Code, the Code of Civil Procedure and the Penal Code of the State of Montana, and the General Statutes passed by the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 10th regular sessions of the Legislative Assemblies of the State of Montana, and all other acts and parts of acts which are not repealed by any of the four codes or by any of the Session Laws, or adjudged unconstitutional by the Supreme Court of Montana; and it shall be the duty of the said Commissioner to compile, revise and arrange under proper headings, subjects and chapters, in the Civil Code, the Penal Code, the Code of Civil Procedure and the Political Code all laws of a permanent and general nature which shall be in force after the adjournment of the 10th Legislative Assembly, with authority to rearrange the chapters in the respective Codes, to renumber and transpose such sections, and to provide other and different head notes to Chapters. [Act approved March 4, 1907, § 1.] (10th Sess. Chap. 85.)

3568. *Date of appointment and term of office.*—The said Commissioner shall be appointed on or before the 1st day of April, 1907, and shall enter upon the discharge of his duties on or before the 1st day of May, 1907, and shall hold office for a period of two years following after his appointment. [Act approved March 4, 1907, § 2.] (10th Sess. Chap. 85.)

3569. *Oath of office.*—Before entering upon the discharge of his duties the said Commissioner shall take and subscribe the oath of office provided by § 352 (1010) of the Political Code, to be filed in the office of the Secretary of State. [Act approved March 4, 1907, § 3.] (10th Sess. Chap. 85.)

3570. *Division of codes and index.*—The Commissioner shall divide the laws into four codes, which shall be the same as the present codes, and shall make for each of the said codes a new, complete, working index to the contents thereof, alphabetically arranged and of sufficient particularity to refer to each section contained in such codes, and subjects thereof; which index must be printed and bound in its appropriate volume; and must make a new, general index of like completeness, which must be printed and bound in one of said volumes. [Act approved March 4, 1907, § 4.] (10th Sess. Chap. 85.)

3571. *Matter to be included.*—Said Commissioner is hereby authorized and instructed to prepare with said Codes for publication, and in the first part of the first volume, a copy of the Constitution of the United States and the State of Montana; the Declaration of Independence; the Organic Act of the Territory of Montana; the Act for admission of Montana as a State; the laws of Congress, relating to naturalization and the authentica-

tion of the laws and records, together with an index of each of the foregoing. [*Act approved March 4, 1907, § 5.*] (*10th Sess. Chap. 85.*)

3572. *Identification of statutes.*—In compiling and revising said statutes of the 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th Legislative Assemblies, the Commissioner must add a note to each section showing the date of its enactment. [*Act approved March 4, 1907, § 6.*] (*10th Sess. Chap. 85.*)

3573. *Powers of commissioner.*—This Act shall not be construed as giving said Commissioner power to change, modify or make any law or laws, but only as giving him full power and authority to complete a full revision and compilation of the laws of the State. [*Act approved March 4, 1907, § 7.*] (*10th Sess. Chap. 85.*)

3574. *Compensation of commissioner.*—Said Commissioner shall receive the sum of Four Thousand (4,000) Dollars in full compensation for his services in compiling and revising and indexing the said codes and laws and for preparing the same for printing and in reading and correcting the proofs of all matters therein contained. Said Commissioner shall upon the completion of each of said codes and the filing thereof with the Secretary of State, receive the sum of One Thousand (1,000) Dollars for services for compiling each of such codes and the State Auditor, upon the certificate of the Secretary of State, is directed to draw his warrant in favor of said Commissioner for the sum of One Thousand (1,000) Dollars for such services for each of such codes, and the State Treasurer is directed to pay the same. He shall be furnished by the State Board of Examiners with the necessary stationery and supplies for the purpose of such work, and not less than two copies of each of the present codes and three copies of each of the 4th, 5th, 6th, 7th, 8th, 9th, and 10th Session Laws. [*Act approved March 4, 1907, § 8.*] (*10th Sess. Chap. 85.*)

3575. *Annotations.*—Said Codes and laws as compiled and revised by the said Commissioner shall be annotated by the publisher thereof, which annotation shall show by proper and appropriate references all decisions of the Supreme Court of Montana, commenting upon or in any way referring to any section of the laws or Constitution of Montana, up to the first day of June, 1907, and annotations to the decisions of the Supreme Court of California; referring to or in any way construing laws of that State where such laws are similar to the laws of Montana. Such annotations shall state only the title of the case and the names, the number of volume and page of report containing such decisions. [*Act approved March 4, 1907, § 9.*] (*10th Sess. Chap. 85.*)

3576. *Form of publication.*—The said code when so revised and compiled, shall be known as and referred to as the Revised Codes of Montana of 1907, and shall be published in two volumes, equal in size, quality and paper, press work and binding, and similar in respect to the type used in the present codes. [Act approved March 4, 1907, § 10.] (10th Sess. Chap. 85.)

3577. *Contract for printing.*—The State Furnishing Board of the State of Montana shall, upon the completion of the work of said Commissioner, contract for the publication and annotation of said codes, as specified in this Act, contracting with the publishing house who will annotate the laws as provided for in this Act and publish same on the terms most expeditious and advantageous to the State, which contract must not exceed the sum of Twelve Thousand (12,000) Dollars for the publication and annotation of one thousand sets, containing three thousand and five hundred pages or less, and Two (2) Dollars for each additional page. [Act approved March 4, 1907, § 11.] (10th Sess. Chap. 85.)

3578. *Same.*—The contract shall specify that one thousand sets shall be printed, published and delivered to the Secretary of State, on or before the 1st day of April, 1908. That the publishers shall keep on hand, and for sale, at a price not to exceed Fifteen (15) Dollars per set, a sufficient number of copies of said codes to supply all demands for a period of not less than eight years. That the publishers shall also make and keep on hand a full and complete set of stereotype matrices of each and every page of type used in printing the codes. [Act approved March 4, 1907, § 12.] (10th Sess. Chap. 85.)

3579. *Payment of publisher.*—On the certificate of the Secretary of State that he has received one thousand sets of said codes, printed and bound in accordance with said contract, the auditor of the State is directed to draw his warrant in favor of the publisher of said codes for the amount of money due to him under said contract, and the Treasurer of the State is hereby authorized to pay the said warrant out of any moneys in his hands not otherwise appropriated. [Act approved March 4, 1907, § 13.] (10th Sess. Chap. 85.)

3580. *Bond of contractor.*—The publisher to whom said contract is awarded must execute to the State of Montana a good and sufficient bond in the sum of Ten Thousand (10,000) Dollars conditioned for the faithful performance of said contract. [Act approved March 4, 1907, § 14.] (10th Sess. Chap. 85.)

3581. *Distribution of revised codes.*—The Secretary of State, upon receipt of said published codes, shall distribute the same or

so many of them as may be necessary, in the same manner and to the same officers and offices as Session Laws are distributed. [*Act approved March 4, 1907, § 15.*] (*10th Sess. Chap. 85.*)

3582. *Appropriation.*—The sum of Sixteen Thousand (16,000) Dollars or so much thereof as may be necessary is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated to pay the compensation of such Commissioner and the cost of such publication and annotation of said Code as herein provided. [*Act approved March 4, 1907, § 16.*] (*10th Sess. Chap. 85.*)

(*Political Code except where otherwise noted, Act approved February 25, 1895.*)

ADDENDA.

Section 2 of an act approved March 13, 1895 (*4th Sess. 16*). entitled "An Act to Appropriate money for the Executive, Legislative and Judicial Departments for the Fiscal Years ending December 1st, A. D. 1895, and December 1st, A. D. 1896," provides as follows:

"Sec. 2. That all moneys now or hereafter appropriated for any specific purpose, shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated; *Provided, however,* that any unexpended balance in any specific appropriation may be used for either of said years, for which such appropriation has been made."

The publication of this section was omitted from the Codes by the former Commissioner, and is published here for reference.

CODE COMMISSIONER.

II.--CIVIL CODE.

AN ACT TO ESTABLISH A CIVIL CODE.

Be it enacted by the Legislative Assembly of the State of Montana:

TITLE OF THE ACT.

3583. (§ 1.) This act shall be known as the civil code of the state of Montana, and is in four divisions, as follows:

1. The first relating to persons.
 2. The second to property.
 3. The third to obligations.
 4. The fourth contains general provisions relating to persons, property and obligations.
-

DIVISION FIRST.

- PART I. PERSONS.
II. PERSONAL RIGHTS.
III. PERSONAL RELATIONS.
IV. CORPORATIONS.
-

PART I.

PERSONS.

- Section 3584. Minors, who are.*
“ 3585. *Periods of minority, how calculated.*
“ 3586. *Adults, who are.*
“ 3587. *Unborn children.*
“ 3588. *Persons of unsound mind.*
“ 3589. *Custody of minors, etc.*
“ 3590. *Powers of minors.*
“ 3591. *Contracts of minors.*
“ 3592. *When minors may disaffirm.*
“ 3593. *Cannot disaffirm contracts for necessities.*
“ 3594. *Nor certain obligations.*
“ 3595. *Contracts of persons without understanding.*

Section 3596. Contracts of other persons of unsound mind.

“ 3597. *Powers of persons whose incapacity has been adjudged.*

“ 3598. *Minors liable for wrongs, but not for exemplary damages.*

“ 3599. *Minors may enforce their rights.*

3584. (§ 10.) *Minors, who are.—Minors are:*

1. Males under twenty-one years of age.

2. Females under eighteen years of age.

3585. (§ 11.) *Periods of minority, how calculated.*—The periods specified in the preceding section must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

3586. (§ 12.) *Adults, who are*—All other persons are adults.

3587. (§ 13.) *Unborn children.*—A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

Daubert v. Western Co., 139 Cal. 483; 69 Pac. 297.

3588. (§ 14.) *Persons of unsound mind.*—Persons of unsound mind, within the meaning of this code, are idiots, lunatics, imbeciles and habitual drunkards.

3589. (§ 15.) *Custody of minors, etc.*—The custody of minors and persons of unsound mind is regulated by part III. of this division.

3590. (§ 16.) *Powers of minors.*—A minor cannot give a delegation of power.

3591. (§ 17.) *Contracts of minors.*—A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this title, and to the provisions of the title on marriage.

3592. (§ 18.) *When minors may disaffirm.*—In all cases other than those specified by §§ 3593 (19) and 3594 (20), the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

Whyte v. Rosencrantz, 123 Cal. 639; 56 Pac. 436.

3593. (§ 19.) *Cannot disaffirm contracts for necessities.*—A minor, or a person of unsound mind, cannot disaffirm a contract otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

3594. (§ 20.) *Nor certain obligations.*—A minor cannot dis-affirm an obligation, otherwise valid entered into by him under the express authority or direction of a statute.

3595. (§ 21.) *Contracts of persons without understanding.*—A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

Jacks v. Estee, 139 Cal. 511; 73 Pac. 247.

3596. (§ 22.) *Contracts of other persons of unsound mind.*—A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in the chapter on rescission, of this code.

Ripperdan v. Weldy, 149 Cal. 637; 87 Pac. 276.

3597. (§ 23.) *Powers of persons whose incapacity has been adjudged.*—After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Castro v. Geil, 110 Cal. 296; 42 Pac. 804.

3598. (§ 24.) *Minors liable for wrongs, but not for exemplary damages.*—A minor, or person of unsound mind, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

3599. (§ 25.) *Minors may enforce their rights.*—A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PART II.

PERSONAL RIGHTS.

Section 3600. *General personal rights.*

“ 3601. *Defamation, what.*

“ 3602. *Libel, what.*

“ 3603. *Slander, what.*

“ 3604. *What communications are privileged.*

“ 3605. *Protection to personal relations.*

“ 3606. *Right to use force.*

3600. (§ 30.) *General personal rights.*—Besides the personal rights mentioned or recognized in the Political Code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm from personal insult, from defamation, and from injury to his personal relations.

Dittrich v. Gobey, 119 Cal. 601; 51 Pac. 962.

3601. (§ 31.) *Defamation, what.*—Defamation is effected by:

1. Libel.
2. Slander.

3602. (§ 32.) *Libel, what.*—Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

Paxton v. Woodward, 31 Mont. 211; 78 Pac. 217. The existence of malice is not a necessary ingredient to entitle plaintiff to recover such sum as will fairly compensate him for the injury sustained. It would not be an obstacle to

such recovery that defendant, acting in good faith, had probable cause for belief, and at the time did believe the charge to be true, and was free from malice.

Schomberg v. Walker, 132 Cal. 227; 64 Pac. 290.

3603. (§ 33.) *Slander, what.*—Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime.
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease.
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.
4. Imputes to him impotence or want of chastity; or,
5. Which, by natural consequence, causes actual damage.

Haub v. Frieremuth, 1 C. App. 557; 82 Pac. 571.

3604. (§ 34.) *What communications are privileged.*—A privileged publication is one made:

1. In the proper discharge of an official duty.
2. In any legislative or judicial proceeding, or in any other official proceeding authorized by law.
3. In a communication, without malice, to a person interested therein by one who is also interested, or by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

Jarman v. Rea, 137 Cal. 349; 70 Pac. 216.

3605. (§ 35.) *Protection to personal relations.*—The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master.

3. The seduction of a wife, daughter, orphan sister, or servant.

4. Any injury to a servant which affects his ability to serve his master.

Humphrey v. Pope, 122 Cal. 256; 54 Pac. 847.

3606. (§ 36.) *Right to use force.*—Any necessary force may be used to protect from wrongful injury the person or property of one's self, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

PART III.

PERSONAL RELATIONS.

TITLE I. MARRIAGE.

II. PARENT AND CHILD.

III. GUARDIAN AND WARD.

IV. APPRENTICES.

TITLE I.

MARRIAGE.

CHAPTER I. THE CONTRACT OF MARRIAGE.

II. DIVORCE.

III. HUSBAND AND WIFE, DOWER.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I. VALIDITY OF MARRIAGE.

II. AUTHENTICATION OF MARRIAGE.

III. JUDICIAL DETERMINATION OF VOID MARRIAGES.

ARTICLE I.

VALIDITY OF MARRIAGE.

- Section 3607. What constitutes marriage.*
“ 3608. *Minors capable of contracting marriage.*
“ 3609. *Marriage, how manifested and proved.*
“ 3610. *Certain marriages voidable.*
“ 3611. *Incompetency of parties to.*
“ 3612. *Polygamy forbidden.*
“ 3613. *Released from marriage contract, when.*
“ 3614. *Marriages contracted without the state.*
“ 3615. *Certain parts of code not applicable.*

3607. (§ 50.) *What constitutes marriage.*—Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by mutual and public assumption of the marital relation.

Estate of Richards, 133 Cal. 627; 65 Pac. 1034.

3608. (§ 51.) *Minors capable of contracting marriage.*—Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of sixteen years or upwards, and not otherwise disqualified is capable of consenting to and consummating marriage.

People v. Kehoe, 123 Cal. 226; 55 Pac. 911.

3609. (§ 52.) *Marriage, how manifested and proved.*—Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

In re. Ruffino, 116 Cal. 313; 48 Pac. 127.

3610. (§ 53.) *Certain marriages voidable.*—If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable.

3611. (§ 54.) *Incompetency of parties to.*—Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

3612. (§ 55.) *Polygamy forbidden.*—A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any other person than such former husband or wife, is illegal and void from the beginning, unless:

1. The former marriage has been annulled or dissolved.
2. Unless such former husband or wife was absent, and not

known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

Estate of Harrington, 149 Cal. 247; 73 Pac. 1000.

3613. (§ 56.) *Released from marriage contract, when.*—Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

3614. (§ 57.) *Marriages contracted without the state.*—All marriages contracted without the state, which would be valid by the laws of the country in which the same were contracted, are valid in this state.

Estate of Wood, 137 Cal. 136; 69 Pac. 900.

3615. (§ 58.) *Certain parts of code not applicable.*—The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

ARTICLE II.

AUTHENTICATION OF MARRIAGE.

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| Section 3616. | <i>Marriage, how solemnized.</i> |
| " 3617. | <i>By whom solemnized.</i> |
| " 3618. | <i>License must be obtained.</i> |
| " 3619. | <i>Consent of parent or guardian.</i> |
| " 3620. | <i>License, what to contain.</i> |
| " 3621. | <i>License, when refused.</i> |
| " 3622. | <i>Clerk may require evidence.</i> |
| " 3623. | <i>Duty of person solemnizing.</i> |
| " 3624. | <i>Form of certificate.</i> |
| " 3625. | <i>Penalty for failure to return or record.</i> |
| " 3626. | <i>Want of authority in person officiating, effect of.</i> |
| " 3627. | <i>Certificate and copy, prima facie evidence.</i> |
| " 3628. | <i>Certificates of marriage to be given.</i> |
| " 3629. | <i>No form required.</i> |
| " 3630. | <i>Fines for benefit of schools.</i> |
| " 3631. | <i>Declaration of marriage, how made.</i> |
| " 3632. | <i>Declaration to contain, what.</i> |
| " 3633. | <i>Declaration to be acknowledged and recorded.</i> |
| " 3634. | <i>Action to determine validity of.</i> |

3616. (§ 70.) *Marriage, how solemnized.*—Marriage must be licensed, solemnized, authenticated, and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage.

Norman v. Thompson, 121 Cal. 628; 54 Pac. 143.

3617. (§ 71.) *By whom solemnized.*—Marriage may be solemnized by either a justice of the supreme court, judge of the district court, justice of the peace, priest or minister of the gospel of any denomination, or the mayor of any city. Marriages may also be solemnized by religious societies according to the usage of such societies.

3618. (§ 72.) *License must be obtained.*—Previous to the solemnization of any marriage in this state, a license for that purpose must be obtained from the clerk of the district court of the county wherein the marriage is to take place. [*Act approved March 14, 1895.*]

3619. (§ 73.) *Consent of parent or guardian.*—Where either party is a minor no license shall be granted without the written consent of the father, if living, if not, then of the mother of such minor or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

3620. (§ 74.) *License, what to contain.*—When application shall be made for a license to the clerk of the district court he shall, upon the granting of such license, state therein the Christian and surnames of the fathers of both parties; the Christian and maiden names of the mothers of both parties; the Christian and surnames of both parties, the residence of both parties, their places of birth, their respective ages, their color, and whether previously married or divorced, which license shall, prior to the issuing thereof, be entered of record in the office of the clerk of the district court, in a suitable book to be provided for that purpose. [*Act approved March 14, 1895.*]

3621. (§ 75.) *License, when refused.*—If on such testimony being given it shall appear that either of the parties is legally incompetent to enter into such a contract or that there is any impediment in the way, or if either party is a minor, and the consent mentioned in § 3619 (73) shall not be given, or if either party has been divorced, and the time mentioned in § 3657 (146) has not elapsed, the said county clerk shall refuse to grant a license.

3622. (§ 76.) *Clerk may require evidence.*—In case of application for a marriage license, which may be made by either party, or his or her agent or attorney, the clerk of the district court may, in his discretion, require that the necessary information be given under oath, and he is hereby authorized to administer oaths to such applicants for such purpose. When parties apply by mail

for such license their statement of the facts necessary to properly make out such license must be accompanied by an affidavit as to the correctness thereof, taken before a justice of the peace or notary public, or some other person authorized to administer oaths; and in case of a minor, the consent of the parent or guardian must be given in the same manner. [*Act approved March 14, 1895.*]

2623. (§ 77.) *Duty of person solemnizing.*—No person authorized to solemnize marriages shall perform such ceremony until the parties have given him the license issued by the clerk of the district court for their marriage; and when he has completed any such ceremony he shall enter upon such license a certificate of such marriage, showing when and where it occurred, and such certificate shall be attested by two witnesses to such ceremony; he shall, within thirty days after such marriage has been solemnized, return said license and certificate to the clerk of the district court, who shall record the certificate in the same book where the said marriage license is recorded. [*Act approved March 14, 1895.*]

3624. (§ 78.) *Form of certificate.*—The certificate mentioned in the next preceding section shall be substantially in the following form:

The State of Montana, }
County of _____ } ss.

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, judge, etc., as the case may be), did on the _____ day of _____, A. D. 18—, join in lawful wedlock _____ and _____, with their mutual consent, in the presence of _____ and _____, witnesses.

Witness my hand this _____ day of _____, 18—.

3625. (§ 79.) *Penalty for failure to return or record.*—Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof, within thirty days after having solemnized such marriage, shall forfeit for such neglect a sum not less than ten nor more than fifty dollars; and any clerk of the district court who shall neglect to record such certificate so delivered within one month after its delivery, shall forfeit the like penalty. [*Act approved March 14, 1895.*]

3626. (§ 80.) *Want of authority in person officiating, effect of.*—No marriage solemnized before any person professing to have authority shall be deemed or regarded void; nor shall the validity thereof be in any way affected on account of any want of jurisdiction or authority, *provided* it be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

3627. (§ 81.) *Certificate and copy, prima facie evidence.*—The original certificate of marriage, made as prescribed in this

article, and the record thereof by the clerk of the district court, or a copy of such record duly certified by the clerk of the district court, shall be received by all courts in all places as presumptive evidence of such marriage. [*Act approved March 14, 1895.*]

3628. (§ 82.) *Certificates of marriage to be given.*—Whenever a marriage shall have been solemnized pursuant to the provisions of this article, the person who solemnized the same shall give to each of the parties, on request, a certificate under his hand, specifying the names, ages and places of residence of the parties married, the names and residences of at least two witnesses who were at such marriage, and the time and place thereof.

3629. (§ 83.) *No form required.*—In the solemnization of marriage no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate, or minister, or of attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses present at the ceremony.

3630. (§ 84.) *Fines for benefit of schools.*—All fines arising under this article in consequence of a breach of this article, shall be paid into the county treasury for the use of the common schools.

3631. (§ 85.) *Declaration of marriage, how made.*—Persons married without the solemnization provided for in § 3617 (71), must jointly make a declaration of marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. The time of marriage.
4. That the marriage has not been solemnized.

3632. (§ 86.) *Declaration to contain, what.*—If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

1. The names, ages, and residences of the parties.
2. The fact of marriage.
3. That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties and attested by at least three witnesses.

3633. (§ 87.) *Declaration to be acknowledged and recorded.*—Declarations of marriages must be acknowledged and recorded in a like manner as marriage certificates.

3634. (§ 88.) *Action to determine validity of.*—If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the district court, to have the validity of the marriage determined and declared.

ARTICLE III.

JUDICIAL DETERMINATION OF VOID MARRIAGES.

3635. (§ 100.) Either party to an incestuous or void marriage may proceed by action in the district court, to have the same so declared.

CHAPTER II.

DIVORCE.

- ARTICLE I. ANNULING MARRIAGE.
II. DISSOLUTION OF MARRIAGE.
III. CAUSES FOR DENYING DIVORCE.
IV. GENERAL PROVISIONS.

ARTICLE I.

ANNULING MARRIAGE.

- Section 3636. Cases where marriage may be annulled.*
“ 3637. *Action to obtain decree of nullity in certain cases, when and by whom commenced.*
“ 3638. *Children of annulled marriage.*
“ 3639. *Custody of children.*
“ 3640. *Effect of judgment of nullity.*

3636. (§ 110.) *Cases where marriage may be annulled.*—A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

2. That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

3. That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

4. That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

5. That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. That either party was, at the time of marriage, physically incapable of entering into the married state, and such incapacity continues and appears to be incurable.

Linebaugh v. Linebaugh, 137 Cal. 27; 69 Pac. 616.

3637. (§ 111.) *Action to obtain decree of nullity in certain cases, when and by whom commenced.*—An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision 1, by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent; or by a parent, guardian, or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

2. For causes mentioned in subdivision 2: By either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision 3: By the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

4. For causes mentioned in subdivision 4: By the party injured within two years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivision 5: By the injured party within two years after the marriage.

6. For causes mentioned in subdivision 6: By the injured party within four years after the marriage.

3638. (§ 112.) *Children of annulled marriage.*—Where marriage is annulled, on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties or either of them, that the former husband or wife was dead, or where a marriage is annulled on the ground of insanity, children begotten before the judgment must be specified in the judgment, and are legitimate and entitled to succeed in the same manner as legitimate children to the estate of both parents. [*Act approved March 14, 1895.*]

3639. (§ 113.) *Custody of children.*—The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

3640. (§ 114.) *Effect of judgment of nullity.*—A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.

DISSOLUTION OF MARRIAGE.

- Section 3641. *Marriage, how dissolved.*
 “ 3642. *Divorce, what.*
 “ 3643. *Causes for divorce.*
 “ 3644. *Adultery defined.*
 “ 3645. *Extreme cruelty defined.*
 “ 3646. *Desertion, what.*
 “ 3647. *Who commits desertion.*
 “ 3648. *Separation by consent not desertion.*
 “ 3649. *Separation and intent.*
 “ 3650. *Consent to separation revocable.*
 “ 3651. *Desertion, how cured.*
 “ 3652. *Husband may select home.*
 “ 3653. *If place unfit, desertion.*
 “ 3654. *Willful neglect, what.*
 “ 3655. *Habitual intemperance, what.*
 “ 3656. *Intemperance, desertion, neglect, three years.*
 “ 3657. *Re-marriage regulated.*

3641. (§ 130.) *Marriage, how dissolved.*—Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By a judgment of a court of competent jurisdiction.

3642. (§ 131.) *Divorce, what.*—The effect of a judgment of divorce is to restore the parties to the state of unmarried persons.

Estate of Wood, 137 Cal. 133; 69 Pac. 900.

3643. *Causes for divorce.*—Absolute divorces, or separations from bed and board, or decrees for separate maintenance may be granted for any of the following causes:

1. Adultery.
2. Extreme Cruelty.
3. Willful Desertion.
4. Willful Neglect.
5. Habitual Intemperance.
6. Conviction of Felony. [Act approved March 6, 1907, § 1.] (10th Sess. Chap. 118.)

3644. (§ 133.) *Adultery defined.*—Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

3645. *Extreme cruelty defined.*—Extreme cruelty is the infliction, or threat of grievous bodily injury, or of bodily injury dangerous to life, or the repeated infliction, or threat of bodily injury or personal violence, upon the other party, by one party to the marriage, or the repeated publication or utterance of false charges against the chastity of the wife by the husband, or the in-

fliction of grievous mental suffering upon the other by one party to the marriage by a course of conduct towards, or treatment of one party to the marriage, by the other existing and persisted in for a period of one year immediately before the commencement of the action for divorce, which justly and reasonably is of such a nature and character as so to destroy the peace of mind and happiness of the injured party, or entirely to defeat the proper and legitimate objects of marriage or to render the continuance of the married relation between the parties perpetually unreasonable or intolerable to the injured party. [*Act approved March 6, 1907, § 2.*] (*10th Sess. Chap. 118.*)

3646. (§ 135.) *Desertion, what.*—Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Greer v. Greer, 142 Cal. 523; 77 Pac. 1106.

3647. (§ 136.) *Who commits desertion.*—Departure or absence of one party from the family dwelling place, caused by cruelty or threats of bodily harm, from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Benton v. Benton, 122 Cal. 397; 55 Pac. 152.

3648. (§ 137.) *Separation by consent not desertion.*—Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Sargent v. Sargent, 106 Cal. 544; 39 Pac. 931.

3649. (§ 138.) *Separation and intent.*—Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Sargent v. Sargent, 106 Cal. 544; 39 P. Pac. 931.

3650. (§ 139.) *Consent to separation revocable.*—Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration but the other refuses it, such refusal is desertion.

Howard v. Howard, 134 Cal. 347; 66 Pac. 367.

3651. (§ 140.) *Desertion, how cured.*—If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

Kusel v. Kusel, 147 Cal. 54; 81 Pac. 295.

3652. (§ 141.) *Husband may select home.*—The husband may choose any reasonable place or mode of living and if the wife does not conform thereto it is desertion.

Vosburg v. Vosburg, 136 Cal. 203; 68 Pac. 694.

3653. (§ 142.) *If place unfit, desertion.*—If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

3654. (§ 143.) *Willful neglect, what.*—Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so, or it is the failure to do so by reason of idleness, profligacy or dissipation.

Towle v. Matheus, 130 Cal. 577; 62 Pac. 1064.

3655. (§ 144.) *Habitual intemperance, what.*—Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business.

3656. (§ 145.) *Intemperance, desertion, neglect, three years.*—Willful desertion, willful neglect or habitual intemperance must continue for the space of one year before there is a ground for divorce. [Act approved March 6, 1895.]

3657. (§ 146.) *Re-marriage regulated.*—When a divorce is granted for any of the causes mentioned in § 3643 (132), the innocent party can not marry until after the expiration of two years, and the guilty party can not marry until after the expiration of three years from the entry of the judgment of divorce; but this section shall not prevent the parties to the action for a divorce from re-marrying each other at any time. [House bill No. 142, approved March 6, 1895, in its body repeals § 3657 (146), but no reference is made to the section in the title of the repealing act.]

ARTICLE III.

CAUSES FOR DENYING DIVORCE.

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| Section | 3658. | <i>Divorces denied, on showing what.</i> |
| " | 3659. | <i>Connivance, what.</i> |
| " | 3660. | <i>Collusion, what.</i> |
| " | 3661. | <i>Condonation, what.</i> |
| " | 3662. | <i>Requisites to condonation.</i> |
| " | 3663. | <i>Condonation implies what.</i> |
| " | 3664. | <i>Evidence of condonation.</i> |
| " | 3665. | <i>Condonation, when operates to bar divorce.</i> |
| " | 3666. | <i>Concealment of facts in certain cases makes condonation void.</i> |
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Section 3671. Lapse of time establishes certain presumptions.

“ 3672. *Presumptions may be rebutted.*

“ 3673. *Limitation of time.*

“ 3674. *Divorces granted, when.*

“ 3675. *Divorce not to be granted by default, etc.*

3658. (§ 160.) *Divorces denied, on showing what.*—Divorces must be denied upon showing:

1. *Connivance.*

2. *Collusion.*

3. *Condonation.*

4. *Recrimination.* [Act approved March 6, 1895.]

Bordeaux v. Bordeaux, 30 Mont. 42;
75 Pac. 526.

Bordeaux v. Bordeaux, 32 Mont. 165;
80 Pac. 8.

3659. (§ 161.) *Connivance, what.*—Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

Thomson v. Thomson, 121 Cal. 12; 53 Pac. 403.

3660. (§ 162.) *Collusion, what.*—Collusion, is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be falsely represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Thompson v. Thompson, 121 Cal. 12; 53 Pac. 403.

3661. (§ 163.) *Condonation, what.*—Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

Bordeaux v. Bordeaux, 30 Mont. 43;
75 Pac. 527. In an action for divorce on the ground of the adultery of the wife, it appeared that some of plaintiff's witnesses informed him of such adultery within two or three days after its occurrence on December 23, 1897, and that plaintiff continued to live with defend-

ant as his wife until January 23, 1898, occupying the same room in which there was but one bed. Plaintiff thereby condoned her offense and was not entitled to a divorce.

Kusel v. Kusel, 147 Cal. 54; 81 Pac. 297.

3662. (§ 164.) *Requisites to condonation.*—The following requirements are necessary to condonation:

1. A knowledge on the part of the injured party of the facts constituting the cause of divorce.

2. Reconciliation and remission of the offense by the injured party.

3. Restoration of the offending party to all marital rights.

Andros v. Andros, 1 C. App. 310; 82 Pac. 90.

3663. (§ 165.) *Condonation implies what.*—Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness.

Andrews v. Andrews, 120 Cal. 189; 52 Pac. 298.

3664. (§ 166.) *Evidence of condonation.*—Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from successive acts of ill-treatment, which may,

aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

Smith v. Smith, 119 Cal. 88; 48 Pac. 730.

3665. (§ 167.) *Condonation, when operates to bar divorce.*—In cases mentioned in the last section, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

3666. (§ 168.) *Concealment of facts in certain cases makes condonation void.*—A fraudulent concealment by the offending party of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

3667. (§ 169.) *Condonation, how revoked.*—Condonation is revoked, and the original cause of divorce revived:

1. When the offending party commits acts constituting a like or other cause of divorce; or,

2. When the offending party is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Andrews v. Andrews, 120 Cal. 189; 52 Pac. 298.

3668. (§ 170.) *Recrimination, what.*—Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Bordeaux v. Bordeaux, 30 Mont. 42; 75 Pac. 526.

3669. (§ 171.) *Condonation in a recriminatory defense a bar to such defense, when.*—When a cause of divorce is set up in the answer as a recriminatory defense, the condonation thereof is a bar to such defense unless:

1. The condonation be revoked as provided in § 3667 (169); or,

2. Two years have elapsed after the condonation and before the accruing or completion of the cause of action alleged in the complaint.

3670. (§ 172.) *Divorce denied, when.*—A divorce must be denied:

1. When the cause is adultery, and the action is not commenced within two years after its discovery by the injured party; or,

2. When the cause is conviction of felony, and the action is not commenced before the expiration of two years after final judgment and sentence.

3. In all other cases where there is an unreasonable lapse of time before the commencement of the action.

McMullin v. McMullin, 140 Cal. 118; 73 Pac. 808.

3671. (§ 173.) *Lapse of time establishes certain presumptions.*—Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation, notwithstanding the commission of such offense.

McMullin v. McMullin, 140 Cal. 118; 73 Pac. 808.

3672. (§ 174.) *Presumptions may be rebutted.*—The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

3673. (§ 175.) *Limitation of time.*—There are no limitations of time for commencing actions for divorce, except such as are contained in § 3670 (172).

3674. (§ 176.) *Divorces granted, when.*—A divorce must not be granted unless the plaintiff has been a resident of the state for one year next preceding the commencement of the action.

Deyoe v. Court, 140 Cal. 483; 74 Pac. 28.

3675. (§ 177.) *Divorce not to be granted by default, etc.*—No divorce can be granted upon the default of the defendant alone, but the cause must be heard in open court, and the court must require proof of all the facts alleged. [Act approved March 6, 1895.]

Avery v. Avery, 148 Cal. 242; 82 Pac. 967.

ARTICLE IV.

GENERAL PROVISIONS.

Section 3676. *Relief may be adjudged, where separation is denied.*

“ 3677. *Expense of action, alimony.*

“ 3678. *Orders respecting custody of children.*

“ 3679. *Support of wife and children on divorce or separation granted to wife.*

“ 3680. *Security for maintenance and alimony.*

“ 3681. *If wife has sufficient support, court may withhold allowance.*

“ 3682. *Property may be subjected to support and education of children.*

“ 3683. *Legitimacy of issue.*

“ 3684. *Same.*

“ 3685. *Disposition of homestead on divorce.*

“ 3686. *How disposed of when divorce rendered on adultery.*

“ 3687. *Such an action subject to revision on appeal.*

“ 3688. *Poor woman may sue without costs.*

“ 3689. *Notice of application for alimony.*

3676. (§ 190.) *Relief may be adjudged, when separation is denied.*—Though judgment of divorce is denied, the court may, in its discretion, in an action for divorce, provide for the maintenance of the wife and her children, or any of them, by the husband.

Volkmar v. Volkmar, 147 Cal. 176; 81 Pac. 413.

3677. (§ 191.) *Expense of action, alimony.*—While an action for divorce is pending the court or judge may, in its or his discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action. When the husband willfully deserts the wife, she may, without applying for a divorce, maintain in the district court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court, or judge, may, in its or his discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and executions may issue therefor in the discretion of the court or judge. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

Bordeaux v. Bordeaux, 26 Mont. 534; 69 Pac. 104. The supreme court has no power to allow temporary alimony or suit money pending an appeal in a divorce case.

Bordeaux v. Bordeaux, 29 Mont. 478; 75 Pac. 359. The district court has no power, after trial and judgment for the husband, to compel the husband to pay

for past services of attorneys, or expenses of the trial, except when such payment is necessary to enable the wife to continue her defense, or prepare and present a motion for a new trial or an appeal.

Yoree v. Yoree, 1 C. App. 155; 81 Pac. 1023.

3678. (§ 192.) *Orders respecting custody of children.*—In an action for divorce the court or judge may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

Pearce v. Pearce, 30 Mont. 271; 76 Pac. 290. The court of its own motion, where the parents file no petition, should inquire into the facts and make the necessary order for the custody of the children. When moved by either party,

the court must make this inquiry, and if a mistake is made in the first instance, remedy the same on a proper showing.

Black v. Black, 149 Cal. 226; 86 Pac. 505.

3679. (§ 193.) *Support of wife and children on divorce or separation granted to wife.*—Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support, during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may, from time to time, modify its orders in these respects.

Kusel v. Kusel, 147 Cal. 60; 81 Pac. 295.

3680. (§ 194.) *Security for maintenance and alimony.*—The court, or judge, may require the husband to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case.

Mayberry v. Whittier, 144 Cal. 325; 78 Pac. 16.

3681. (§ 195.) *If wife has sufficient support, court may withhold allowance.*—When the wife has a separate estate sufficient to give her proper support, the court, or judge, in its or his discretion, may withhold any allowance to her out of the property of the husband.

3682. (§ 196.) *Property may be subjected to support and education of children.*—The property of the husband and wife may be subjected to the support and education of the children in such proportions as the court deems just, or the property of the guilty party only, may be subjected to such support and education.

3683. (§ 197.) *Legitimacy of issue.*—When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected.

3684. (§ 198.) *Same.*—When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children, begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

3685. (§ 199.) *Disposition of homestead on divorce.*—In case of the dissolution of the marriage by the judgment of a court of competent jurisdiction, the homestead, if selected from the separate property of either husband or wife shall be assigned to the former owner of such property, subject to the power of the court to assign it for a limited period to the innocent party.

3686. (§ 200.) *How disposed of when divorce rendered on adultery.*—The court, in rendering a judgment of divorce, must make such order for the disposition of the homestead as in this chapter provided.

3687. (§ 201.) *Such an action subject to revision on appeal.*—The disposition of the homestead, as above provided, is subject to revision on appeal.

3688. (§ 202.) *Poor woman may sue without costs.*—Any woman suing for a divorce who shall make it appear to the court that she is poor and unable to pay the expenses of such suit, shall be allowed by the court to prosecute her suit without costs.

3689. (§ 203.) *Notice of application for alimony.*—No order for alimony shall be made until notice of the time and place of

the hearing shall be served upon the opposite party in cases when such party has appeared, and in all other cases the notice shall be served upon the clerk of the court in which the action is pending.

CHAPTER III.

HUSBAND AND WIFE, DOWER.

- Section 3690. *Mutual obligations of husband and wife.*
 “ 3691. *Rights of husband as head of family.*
 “ 3692. *Duties of husband to wife as to support.*
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" 3735. *May make will.*

" 3736. *May make contracts.*

" 3737. *Tenancy by courtesy not allowed.*

3690. (§ 210.) *Mutual obligations of husband and wife.*—Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

Livingston v. Court, 117 Cal. 635; 49 Pac. 836.

3691. (§ 211.) *Rights of husband as head of family.*—The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

Kessler v. Kessler, 2 C. App. 512; 83 Pac. 257.

3692. (§ 212.) *Duties of husband to wife as to support.*—The husband must support himself and wife out of his property or by his labor. If he is unable to do so, she must assist him as far as she is able.

3693. (§ 213.) *In other respects their interests separate.*—Neither husband nor wife has any interest in the property of the other, except as mentioned in the preceding section, but neither can be excluded from the other's dwelling.

Kessler v. Kessler, 2 C. App. 513; 83 Pac. 257.

3694. (§ 214.) *Husband and wife may make contracts.*—Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

Alferitz v. Arrivillaga, 143 Cal. 649; 77 Pac. 658.

3695. (§ 215.) *How far may impair their legal obligations.*—A husband and wife can not, by any contract with each other, alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

Stebbins v. Morris, 19 Mont. 118; 47 Pac. 643. An agreement between husband and wife providing for a separation, an adjustment of their respective interests in property and for the support of the wife, is valid only when it is to take effect at once and is immediately complied with, and when the

marital relations are of such a character as to render a separation necessary for the health or happiness of one or the other; and such agreement will not be enforced when it is to be used as a means to facilitate a divorce.

Kaltschmidt v. Weber, 145 Cal. 599; 79 Pac. 272.

3696. (§ 216.) *Consideration for separation.*—The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in the last section.

Stebbins v. Morris, 19 Mont. 118; 47 Pac. 643.

3697. (§ 217.) *May be joint tenants.*—A husband and wife may hold real or personal property together, jointly or in common.

Harlow v. Standard Co., 145 Cal. 480; 78 Pac. 1045.

3698. (§ 218.) *Neither answerable for acts of other.*—Neither husband nor wife, as such, is answerable for the acts of the other.

3699. (§ 219.) *Married women may prosecute actions.*—A married woman in her own name may prosecute action for injuries to her reputation, person, property, and character, or for the enforcement of any legal or equitable right, and may in like manner defend any action brought against herself.

3700. (§ 220.) *Separate property of wife.*—All the property of the wife owned before her marriage and that acquired afterwards is her separate property. The wife may, without the consent of her husband, convey her separate property or execute a power of attorney for the conveyance thereof.

Chan v. Slater, 33 Mont. 164; 82 Pac. 660.

3701. (§ 221.) *Inventory of separate property of wife.*—A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the county clerk of the county in which the parties reside.

Chan v. Slater, 33 Mont. 164; 82 Pac. 660. The inventory of the separate property of the wife is necessary to protect such property only when it is in the

exclusive possession of the husband, and third persons deal with him on the credit thereof without knowledge of the claim of the wife.

3702. (§ 222.) *Record of same.*—The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the wife.

Chan v. Slater, 33 Mont. 164; 82 Pac. 660.

3703. (§ 223.) *Earnings and accumulations of wife.*—The earnings and accumulations of the wife are not liable for the debts of the husband.

Chan v. Slater, 33 Mont. 164; 82 Pac. 660. Property acquired by the wife subsequent to the contracting of a debt by the husband, cannot be held liable for

such debt.

Melvin v. State. 121 Cal. 25; 53 Pac. 416.

3704. (§ 224.) *Same when separated.*—The earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

3705. (§ 225.) *Work and labor of wife.*—All work and labor performed by a married woman for a person other than her husband and children shall, unless there is a written agreement on her part to the contrary, be presumed to be performed on her separate account.

Chan v. Slater, 33 Mont. 164; 82 Pac. 660.

3706. (§ 226.) *Debts of wife contracted before marriage.*—The property of the husband is not liable for the debts of the wife contracted before marriage.

Melvin v. State, 121 Cal. 25; 53 Pac. 416.

3707. (§ 227.) *Separate property of wife, how far liable.*—The separate property of the wife shall be exempt from all debts and liabilities of the husband, unless for necessary articles procured for the use and benefit of herself and her children under the age of eighteen years, but such exemption shall extend only to such property of such wife as shall be mentioned in an inventory thereof, as provided in §§ 3701 (221) and 3702 (222). And in no case shall any of the separate property of the wife be liable for the debts of the husband, unless such property is in the sole and exclusive possession of the husband, and then only to such persons as deal with the husband in good faith on the credit of such property, without knowledge or notice that the property belongs to the wife. But the separate property of the wife is liable for her own debts, contracted before or after marriage.

Chan v. Slater, 33 Mont. 165; 82 Pac. 660.

Webster v. Sherman, 33 Mont. 457; 84 Pac. 881. If a sale is sufficient to

pass the title from the husband to the wife, as between themselves, the property becomes the separate property of the wife.

3708. (§ 228.) *Dower.*—A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form. When a wife joins with her husband in the execution of any conveyance of land, she thereby relinquishes her inchoate right, and shall not thereafter have dower therein, except in case of sale under mortgage signed and executed by herself and husband she shall have a right of dower in the surplus. Equitable estates shall be subject to the widow's dower, and all real estate of every description, contracted for by the husband during his lifetime, the title to which may be completed after his decease.

Dahlman v. Dahlman, 28 Mont. 374; 72 Pac. 748. The rights of a wife to dower or election under sections 228 and 236 of this code are separate from her rights as an heir of her husband under section 1852 of this code, and her par-

ticipation in the distribution of the estate as such heir does not constitute a waiver of such right of election to take one-half of the residue after payment of debts.

3709. (§ 229.) *Mortgaged lands subject to dower.*—When a person seized of an estate of inheritance in land shall have executed a mortgage of such estate before or after marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

3710. (§ 230.) *Dower subject to purchase money.*—When a husband shall purchase lands during coverture, and shall mortgage such lands to secure the payment of the purchase money thereof, his widow shall not be entitled to dower out of such

lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

3711. (§ 231.) *Dower in surplus under mortgage.*—When, in the cases specified in the two preceding sections, the mortgagee, or those claiming under him, shall, after the death of such husband, cause the land mortgaged to be sold, either under a power contained in the mortgage or by virtue of a judgment or decree of a court, and any surplus shall remain after the payment of the moneys due on such mortgage and the costs and charges of sale, such widow shall be entitled to the interest or income of one-third part of such surplus for life as her dower.

3712. (§ 232.) *Dower not to attach unless absolute title.*—A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he shall have acquired an absolute estate during the marriage.

3713. (§ 233.) *Absent wife need not sign deed.*—Any married man residing and owning real property in the state, whose wife has never been in the state or territory of Montana, can by deed, mortgage, or other conveyance, grant the full title to such property by his own signature, and the wife or widow shall have no dower interest in the property to which the title of the husband is so divested.

3714. (§ 234.) *Widow may elect.*—Every devise or bequest shall bar a widow's dower in lands or her share in personal estate unless otherwise expressed in the will; but she may elect whether she will take such devise or bequest, or whether she will renounce the benefit of such devise or bequest, and take her dower in the lands and her share in the personal estate.

Dahlman v. Dahlman, 28 Mont. 377; 72 Pac. 749.

3715. (§ 235.) *Renunciation and form of.*—When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within one year after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to-wit: "I, A B, widow of C D, late of the county of———, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the late will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by

thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

3716. (§ 236.) *Rights of widows when no issue.*—If a husband die, leaving a widow, but no children, nor descendents of children, such widow may, if she elect, have, in lieu of her dower in the estate of which her husband died seized, whether the same shall have been assigned or not, absolutely and in her own right, as if she were sole, one-half of all the real estate which shall remain after the payment of all just debts and claims against the deceased husband; *Provided*, That, in case dower in such estate shall have been already assigned, she shall make such new election within two months after being notified of the payment of such claims and debts.

Dahlman v. Dahlman, 28 Mont. 374; 72 Pac. 748.

In re. Dahlman's Estate, 28 Mont. 379; 72 Pac. 750. The district court in the exercise of its probate jurisdic-

tion can make no order affecting the dower right of a widow; and she may bring an action to have her dower allotted to her, although the order of distribution does not mention her right.

3717. (§ 237.) *Rights of widows when lands exchanged.*—If a husband seized of an estate of inheritance in lands, exchanges it for other lands, his widow shall not have dower of both, but shall make her election as hereinbefore provided, to be endowed of the lands given, or of those taken in exchange. And if such election be not evinced by the commencement of the proceedings for the recovery and assignment of her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands taken in exchange.

3718. (§ 238.) *Widow's rights in land aliened.*—When a widow is entitled to dower out of any lands aliened by her husband in his lifetime, and such lands have been enhanced in value after the alienation, such lands shall be estimated in setting out the widow's dower according to their value at the time when they were so aliened.

3719. (§ 239.) *Ante-nuptial settlement, when a bar to dower.*—A woman may be barred of her dower in all of the land of her husband by a jointure settled on her with her assent before the marriage; *Provided*, such jointure consists of a freehold estate in lands for the life of the wife, at least, to take effect in possession or profits immediate on the death of the husband.

Dahlman v. Dahlman, 28 Mont. 377; 72 Pac. 750.

3720. (§ 240.) *Assent to marriage settlement.*—Such assent shall be expressed if the woman is of full age by her becoming a party to the conveyance by which it is settled; and if she is under age, by her joining with her father or guardian in such conveyance.

Dahlman v. Dahlman, 28 Mont. 377; 72 Pac. 750.

3721. (§ 241.) *When dower may be assigned anew.*—If a woman is lawfully evicted of lands assigned to her as a dower or settled upon the jointure, or is deprived of the provisions made for her by will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure or other provision had not been made.

3722. (§ 242.) *Not suffer waste.*—No woman endowed of any lands shall commit or suffer waste on the same; but she shall maintain the houses and tenements with the fences and appurtenances in good repair, and shall be liable to the person having the next immediate estate of inheritance therein for all damages occasioned by any waste committed or suffered by her.

3723. (§ 243.) *Right to dower not affected by acts of husband.*—No act, deed or conveyance, executed or performed by the husband, without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the estates of married women, and no judgment or decree confessed by or recovered against him, and no laches, default, covin or crime of the husband, shall prejudice the rights of the wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto.

3724. (§ 244.) *Support of wife.*—If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may in good faith supply her with articles necessary for her support, and recover the reasonable value thereof from her husband.

Hoey v. Hechtman, 2 C. App. 122; 83 Pac. 85.

3725. (§ 245.) *Husband not liable when abandoned by wife.*—A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement.

Kessler v. Kessler, 2 C. App. 512; 83 Pac. 257.

3726. (§ 246.) *When wife must support husband.*—The wife must support the husband when he has not deserted her out of her separate property, when he has no separate property, and he is unable from infirmity to support himself.

Livingston v. Court, 117 Cal. 634; 49 Pac. 836.

3727. (§ 247.) *Rights of husband, how governed.*—The property rights of the husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

3728. (§ 248.) *Marriage settlement, how executed.*—All contracts for marriage settlements must be in writing, and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

3729. (§ 249.) *To be acknowledged and recorded.*—When such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate may be situated which is granted or affected by such contract.

3730. (§ 250.) *Effect of recording.*—The recording or non-recording of such contract has a like effect as the recording or non-recording of a grant of real property.

3731. (§ 251.) *Minors may make marriage settlement.*—A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

3732. (§ 252.) *May act as executrix.*—A married woman may be an executrix, administratrix, guardian or trustee, and may bind herself and the estate she represents without any act or assent on the part of her husband.

3733. (§ 253.) *May sue and be sued.*—A married woman may sue and be sued in the same manner as if she were sole.

3734. (§ 254.) *Liable for her own contracts.*—The contracts made by a married woman, in respect to her separate property, labor or services, shall not be binding upon her husband, nor render him nor his property liable therefor; but she and her separate property shall be liable on such contracts in the same manner as if she were sole.

3735. (§ 255.) *May make will.*—A married woman may make a will in the same manner and with the same effect as if she were sole, except that such will shall not, without the written consent of her husband, operate to deprive him of more than two-thirds of her real estate, or of more than two-thirds of her personal estate.

3736. (§ 256.) *May make contracts.*—A married woman may make contracts, oral or written, sealed or unsealed, and may waive or relinquish any right or interests in any real estate, either in person or by attorney, in the same manner, to the same extent and with the like effect as if she were a single woman.

3737. (§ 257.) *Tenancy by courtesy not allowed.*—No estate is allowed the husband as tenant by courtesy upon the death of his wife.

Allen v. Roush, 15 Mont. 449; 39 Pac. 459. Section 1432, fifth division, Compiled Statutes of Montana, frees the listed property of a married woman from certain debts of her husband, but does

not give to a married woman complete status as a *feme sole*, in reference to such property, or deprive a husband of courtesy in such property.

TITLE II.

PARENT AND CHILD.

CHAPTER I. CHILDREN BY BIRTH.

II. CHILDREN BY ADOPTION.

CHAPTER I.

CHILDREN BY BIRTH.

- Section 3738. *Legitimacy of children born in wedlock.*
- “ 3739. *Legitimacy of children born out of wedlock.*
- “ 3740. *Who may dispute the legitimacy of a child.*
- “ 3741. *Obligations of parents for the support and education of their children.*
- “ 3742. *Custody of legitimate child.*
- “ 3743. *Husband and wife living separate, neither to have superior right to custody of children.*
- “ 3744. *When husband or wife may bring action for the exclusive control of children. Decree in such cases.*
- “ 3745. *Custody of illegitimate child.*
- “ 3746. *Allowance to parent.*
- “ 3747. *Parent cannot control the property of child.*
- “ 3748. *Remedy for parental abuse.*
- “ 3749. *When parental authority ceases.*
- “ 3750. *Remedy when parent dies without providing for the support of his child.*
- “ 3751. *Reciprocal duties of parents and children in maintaining each other.*
- “ 3752. *When a parent is liable for necessities supplied to a child.*
- “ 3753. *When a parent is not liable for support furnished his child.*
- “ 3754. *Husband not bound for the support of his wife's children by a former marriage.*
- “ 3755. *Compensation and support of adult child.*
- “ 3756. *Parent may relinquish services and custody of child.*
- “ 3757. *Wages of minors.*
- “ 3758. *Right of parent to determine the residence of child.*
- “ 3759. *Wife in certain cases may obtain custody of minor children.*
- “ 3760. *Child legitimatized by marriage of parents.*

3738. (§ 280.) *Legitimacy of children born in wedlock.*—
All children born in wedlock are presumed to be legitimate.

3739. (§ 281.) *Legitimacy of children born out of wedlock.*—All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

Estate of Wood, 137 Cal. 134; 69 Pac. 900.

3740. (§ 282.) *Who may dispute the legitimacy of a child.*—The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Estate of Mills, 137 Cal. 303; 70 Pac. 91.

3741. (§ 283.) *Obligations of parents for the support and education of their children.*—The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give is inadequate, the mother must assist him to the extent of her ability.

Selfridge. v. Paxton, 145 Cal. 716; 79 Pac. 425.

3742. (§ 284.) *Custody of legitimate child.*—The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, excepting the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

In re Van Loan, 142 Cal. 426; 76 Pac. 37.

3743. (§ 285.) *Husband and wife living separate, neither to have superior right to custody of children.*—The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

Van Loan Guardianship, 142 Cal. 426; 76 Pac. 37.

3744. (§ 286.) *When husband or wife may bring action for the exclusive control of children. Decree in such cases.*—Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage; and the court or judge may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

3745. (§ 287.) *Custody of illegitimate child.*—The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

3746. (§ 288.) *Allowance to parent.*—The proper court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

3747. (§ 289.) *Parent cannot control the property of child.*—The parent, as such, has no control over the property of the child.

3748. (§ 290.) *Remedy for parental abuse.*—The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the county commissioners of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

In re Lundberg, 143 Cal. 404; 77 Pac. 156.

3749. (§ 291.) *When parental authority ceases.*—The authority of the parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child.
2. Upon the marriage of a child; or,
3. Upon its attaining majority.

Ex parte Miller, 109 Cal. 649; 42 Pac. 428.

3750. (§ 292.) *Remedy when a parent dies without providing for the support of his child.*—If a parent chargeable with the support of a child dies, leaving it chargeable to the county, and leaving an estate sufficient for its support, the county commissioners of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

3751. (§ 293.) *Reciprocal duties of parents and children in maintaining each other.*—It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding.

Duffy v. Yordi, 149 Cal. 142; 84 Pac. 838.

3752. (§ 294.) *When a parent is liable for necessities supplied to a child.*—If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessities, and recover the reasonable value thereof from the parent.

Selfridge v. Paxton, 145 Cal. 716; 79 Pac. 425.

3753. (§ 295.) *When a parent is not liable for support furnished his child.*—A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

McKay v. McKay, 125 Cal. 72; 57 Pac. 677.

3754. (§ 296.) *Husband not bound for the support of his wife's children by a former marriage.*—A husband is not bound to support his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent; and where such is the case, they are not liable to him for their support, nor he to them for their services.

McKay v. McKay, 125 Cal. 70; 57 Pac. 677.

3755. (§ 297.) *Compensation and support of adult child.*—Where a child, after attaining majority, continues to serve and be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

3756. (§ 298.) *Parent may relinquish services and custody of child.*—The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

3757. (§ 299.) *Wages of minors.*—The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

3758. (§ 300.) *Right of parent to determine the residence of child.*—A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

3759. (§ 301.) *Wife in certain cases may obtain custody of minor children.*—When a husband and wife live in a state of separation without being divorced, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court must be guided by the rules prescribed in § 3783 (340).

3760. (§ 302.) *Child legitimized by marriage of parents.*—A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

Blythe v. Ayres, 96 Cal. 563; 31 Pac. 915.

CHAPTER II.

CHILDREN BY ADOPTION.

- Section 3761. Who may adopt minor child.*
“ 3762. *Age of adopting parent.*
“ 3763. *Consent of wife necessary.*
“ 3764. *Consent of child's parents.*
“ 3765. *Consent of child.*
“ 3766. *Proceedings on adoption.*
“ 3767. *Judge's order.*
“ 3768. *Effect of adoption.*
“ 3769. *Effect on former relations of child.*
“ 3770. *Adoption of illegitimate child.*
“ 3771. *Adoption of deserted child.*
“ 3772. *Consent of trustees of Orphans' Home.*

3761. (§ 310.) *Who may adopt minor child.*—Any minor child may be adopted by any adult person who is a citizen, or who under the laws of the United States may become a citizen of the United States, and is of the same race as the child to be adopted, in the cases and subject to the rules prescribed in this chapter. [Act approved March 7, 1907.] (10th Sess. Chap. 140.)

3762. (§ 311.) *Age of adopting parent.*—The person adopting a child must be at least ten years older than the person adopted.

In re Williams, 102 Cal. 79; 36 Pac. 407.

3763. (§ 312.) *Consent of wife necessary.*—A married man, not lawfully separated from his wife, can not adopt a child without the consent of his wife; nor can a married woman not thus separated from her husband, without his consent, provided the husband or wife, not consenting, is capable of giving such consent.

In re Williams, 102 Cal. 790; 36 Pac. 407.

3764. *Consent of child's parents.*—A legitimate child can not be adopted without the consent of its parents, if living; nor an illegitimate child without the consent of its mother if living; except the consent is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child on account of cruelty or neglect, or who has, in this or any other State, wilfully abandoned a child, or caused the same to be maintained in any public Orphan Asylum for one year without contributing to the support of said child; neither is the consent of any one necessary in the case of an abandoned child; *provided, however*, that when any such child being a half orphan; and kept and maintained within any Orphan Home or Asylum in this State for one year or over, may be adopted with the consent of

a majority of the Board of Trustees of said Orphans' Home or asylum, without the consent of the parent, unless such parent has paid toward the expenses of the maintenance of such half-orphan, at least sixty per cent of the legitimate cost of keeping and maintaining said child during the said time, if able to do so; and where the parent is a non-resident of this State, said child may be adopted with the consent of a majority of the Board of Trustees of such Home or Asylum whenever it has been left by its parents in such Home or Asylum for more than one year, whether the parent has contributed to its support or not, and the consent of the parent of such half-orphan is not necessary to its adoption, whenever a majority of the Board of Trustees are authorized to give such consent as in this Chapter, *provided*, which consent shall be given in the same manner that parents are authorized by law to consent to adoption of their children." [Act approved March 1st, 1897, § 1.] (5th Sess. 229-230.)

3765. (§ 31½.) *Consent of child.*—The consent of a child, if over the age of twelve years, is necessary to its adoption.

In re Johnson, 98 Cal. 537; 33 Pac. 460.

3766. (§ 315.) *Proceedings on adoption.*—The person adopting a child and the child adopted, and the other persons, if within or residents of this state, whose consent is necessary, must appear before the judge of the district court of the county where the person adopting resides, and the necessary consent must thereupon be signed and an agreement be executed by the person adopting to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated. If the persons whose consent is necessary are not within or are not residents of the state, then their written consent, duly proved or acknowledged, according to § § 4656 (1602) and 4657 (1603), of this code, shall be filed in said district court at the time of the application for adoption.

In re Johnson, 98 Cal. 537; 33 Pac. 460.

3767. (§ 316.) *Judge's order.*—The judge must examine all persons appearing before him pursuant to the last section, each separately, and if satisfied that the interests of the child will be promoted by the adoption, he must make out an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting.

Estate of Winchester, 140 Cal. 469; 74 Pac. 10.

3768. (§ 317.) *Effect of adoption.*—A child, when adopted, may take the family name of the person adopting. After adoption the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

Estate of Winchester, 149 Cal. 460; 74 Pac. 10.

3769. (§ 318.) *Effect on former relations of child.*—The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards and all responsibility for the child so adopted, and have no right over it.

Younger v. Younger, 106 Cal. 379; 39 Pac. 779.

3770. (§ 319.) *Adoption of illegitimate child.*—The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

Estate of De Laveaga, 142 Cal. 160; 75 Pac. 790.

3771. (§ 320.) *Adoption of deserted child.*—Whenever it is made to appear to the satisfaction of the district court of any county, that any minor child has been deserted by its parents or surviving parent, and that it has no legal guardian, it shall be lawful, with the approval of the district judge, for any person desirous of adopting the said child, to adopt the same, according to law.

3772. *Consent of trustees of Orphans' Home.*—A majority of the Board of Trustees of any Orphans' Home or Asylum in this State are hereby authorized and empowered to consent to the adoption of any orphan child, or child abandoned by its parents, in the same manner that parents are authorized by law to consent to the adoption of their children, *provided* that such orphan child, or child abandoned by its parents, shall have been in the charge and under the management of said Board of Trustees of such Orphans' Home or Asylum for the period of one year prior to such adoption and during the time supported wholly or to the amount of forty per cent at the expense of such Home or Asylum. [Act approved March 1st, 1897, § 2.] (5th Sess. 230.)

TITLE III.

GUARDIAN AND WARD.

- Section 3773. *Guardian, what.*
 " 3774. *Ward, what.*
 " 3775. *Kinds of guardian.*
 " 3776. *General guardian, what.*
 " 3777. *Special guardian, what.*
 " 3778. *Appointment by parent.*
 " 3779. *No person guardian of estate without appointment.*
 " 3780. *Appointment by court.*
 " 3781. *Same.*

Section 3782. Jurisdiction.

- " 3783. *Rules of awarding custody of minors.*
- " 3784. *Powers of guardian appointed by court.*
- " 3785. *Duties of guardian of the person.*
- " 3786. *Duties of guardian of estate.*
- " 3787. *Relation confidential.*
- " 3788. *Guardian under direction of court.*
- " 3789. *Death of a joint guardian.*
- " 3790. *Removal of guardian.*
- " 3791. *Guardian appointed by parent, how superseded.*
- " 3792. *Guardian appointed by court, how superseded.*
- " 3793. *Released by ward.*
- " 3794. *Guardian discharged.*

3773. (§ 330.) *Guardian, what.*—A guardian is a person appointed to take care of the person or property of another.

3774. (§ 331.) *Ward, what.*—The person over whom or over whose property a guardian is appointed, is called a ward.

3775. (§ 332.) *Kinds of guardian.*—Guardians are either:
 1. General; or,
 2. Special.

3776. (§ 333.) *General guardian, what.*—A general guardian is a guardian of the person or of all the property of the ward within this state, or of both.

3777. (§ 334.) *Special guardian, what.*—Every other is a special guardian.

3778. (§ 335.) *Appointment by parent.*—A guardian of the person or property, or of both, of a child born, or likely to be born, may be nominated by will or deed, to take effect upon the death of the parent nominating:

1. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent.

2. If the child be illegitimate, by the mother.

Estate of Henning, 128 Cal. 218; 60 Pac. 762.

3779. (§ 336.) *No person guardian of estate without appointment.*—No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as herein-after provided.

3780. (§ 337.) *Appointment by court.*—A guardian of the person or property, or both, of a person residing in this state, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in § 3778 (335), by the district court, as provided in the Code of Civil Procedure.

Estate of Henning, 128 Cal. 218; 60 P. ac. 762.

3781. (§ 338.) *Same.*—A guardian of the property within this state of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the district court.

3782. (§ 339.) *Jurisdiction.*—In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

3783. (§ 340.) *Rules of awarding custody of minors.*—In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interests of the child in respect to its temporal and its mental and moral welfare, and if the child be of sufficient age to form an intelligent preference, the court may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

First—To a parent.

Second—To one who was indicated by the wishes of a deceased parent.

Third—To one who already stands in the position of a trustee of a fund to be applied to the child's support.

Fourth—To a relative.

Estate of Dellow, 1 C. App. 531; 82 Pac. 558.

3784. (§ 341.) *Powers of guardian appointed by court.*—A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

In re Lundberg, 143 Cal. 403; 77 Pac. 156.

3785. (§ 342.) *Duties of guardian of the person.*—A guardian of the person is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the state, but not elsewhere; without the permission of the court.

Estate of Henning, 128 Cal. 218; 60 Pac. 762.

3786. (§ 343.) *Duties of guardian of estate.*—A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the district court, but must, so far as it is in his power, maintain the same with its buildings and appurtenances, out of the income or other property of the ward, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

Morse v. Hinckley, 124 Cal. 157; 56 Pac. 896.

3787. (§ 344.) *Relation confidential.*—The relation of a guardian and ward is confidential, and is subject to the provisions of the title on trusts.

3788. (§ 345.) *Guardian under direction of court.*—In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

3789. (§ 346.) *Death of a joint guardian.*—On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

3790. (§ 347.) *Removal of guardian.*—A guardian may be removed by the district court for any of the following causes:

1. For abuse of his trust.
2. For continued failure to perform his duties.
3. For incapacity to perform his duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his duties.
6. For removal from the state.
7. In the case of the guardian of the property, for insolvency.
8. When it is no longer proper that the ward should be under guardianship.

In re Lundberg, 143 Cal. 409; 77 Pac. 156.

3791. (§ 348.) *Guardian appointed by parent, how superseded.*—The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided in § 3790 (347).
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

3792. (§ 349.) *Guardian appointed by court, how superseded.*—The power of a guardian appointed by a court is superseded only:

1. By order of the court; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,
3. The guardianship over the person of the ward, by the marriage of the ward.

Cook v. Ceas, 143 Cal. 230; 77 Pac. Mont. 152; 44 Pac. 528.
65. Approved Berkin v. Marsh, 18

3793. (§ 350.) *Released by ward.*—After the ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Cook v. Ceas, 143 Cal. 229; 77 Pac. 65.

3794. (§ 351.) *Guardian discharged.*—A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

Cook v. Ceas, 143 Cal. 229; 77 Pac. 65.

TITLE IV.

APPRENTICES.

- Section 3795. Minors may apprentice themselves.*
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 “ 3801. *Same.*
 “ 3802. *Deposit of indenture.*
 “ 3803. *Causes of annulling indenture.*
 “ 3804. *Indenture to be deposited with county clerk.*

3795. (§ 360.) *Minors may apprentice themselves.*—Every minor, with the consent of the persons or officers hereinafter mentioned, may, of his own free will, bind himself, in writing, called an indenture of apprenticeship, to serve as clerk, apprentice or servant, in any profession, trade or employment, until his majority, or for any stated time, and such binding shall be as valid and effectual as if such minor was of full age at the time of making the engagement.

3796. (§ 361.) *Who to consent thereto.*—Consent to an indenture of apprenticeship must be given by a certificate at the end thereof, or indorsed thereon, signed:

1. By the father and mother of the apprentice.
2. If the father lacks capacity to consent, or has abandoned or neglected to provide for his family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the town, then by the mother.
3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor.
4. If the mother is dead, or lacks capacity to consent, then by the father.
5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,
6. If there is no such parent, executor or guardian, then by the county commissioners of the county, or by any two justices of the peace of the town, or by the district judge.

3797. (§ 362.) *Executors may bind.*—The executors of any last will of a parent who shall be directed in such will to bring up his or her child to some trade or calling, may bind such child to service as a clerk or apprentice in like manner, as the father might have done if living. If there is a surviving mother, her consent also is necessary.

3798. (§ 363.) *Commissioners may bind.*—The county commissioners may bind out minors who are or shall become chargeable to such county, to be clerks, apprentices or servants, which binding shall be as effectual as if such minors had bound themselves with the consent of their father and mother.

3799. (§ 364.) *Age of apprentice to be inserted in indenture.*—The age of every infant so bound shall be inserted in the indentures, and shall be presumed to be the true age; and whenever public officers are authorized to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully of the infant's age.

3800. (§ 365.) *Conditions in.*—Every sum of money paid or agreed for, with or in relation to the binding out of any clerk, apprentice or servant, shall be inserted in the indenture.

3801. (§ 366.) *Same.*—The indenture shall also contain an agreement, on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture.

3802. (§ 367.) *Deposit of indenture.*—The counterpart of any indenture executed by any county, or city, or town officers, must be by them deposited in the office of the county clerk.

3803. (§ 368.) *Causes of annulling indenture.*—Such indenture of apprenticeship may be annulled for:

1. Fraud in the contract of indenture.
2. When such contract is not made or executed in accordance with the provisions of this title.
3. For willful non-fulfillment, by such master, of the provisions of such indenture.
4. Cruelty or maltreatment of such apprentice by the master. In such case the apprentice may recover for his services.

3804. (§ 369.) *Indenture to be deposited with county clerk.*—In no case shall a minor be bound by an indenture until a duplicate thereof shall have been deposited in the office of the county clerk for the benefit of the minor.

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Section 3822. Who are members and who are stockholders of corporations.

" 3823. *Filing articles of incorporation.*

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" 3825. *Corporations, how formed.*

" 3826. *May extend term of existence and incredse stock, etc.*

" 3827. *How change effected.*

" 3828. *Same.*

3805. (§ 390.) *Corporation defined.*—A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

State v. Rotwitt, 18 Mont. 87; 44 Pac. 409. The issuance by the secretary of state of a certificate that a certified copy of the articles of incorporation of a company, organized under the provisions of

the civil code, containing the required statement of facts, has been filed in his office, is a prerequisite to the legal formation of a domestic corporation.

3806. (§ 391.) *What are public and what private corporations.*—Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the state; all other corporations are private.

People v. Reclamation District, 117 Cal. 121; 48 Pac. 1016.

3807. (§ 392.) *Corporations, how formed.*—Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article.

People v. Lodge, 128 Cal. 260; 60 Pac. 865.

3808. (§ 393.) *For what purpose private corporations are formed.*—The purposes for which the private corporations mentioned in the last section are:

1. The support of public worship.
2. The support of any religious, benevolent, charitable, educational or missionary undertaking.
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts.
4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks, and of facilities for skating and other innocent sports.
6. The maintenance of a club for social enjoyment.
7. The maintenance of a public or private cemetery.
8. The prevention and punishment of theft or willful injuries to property and insurance against such risks.
9. The insurance of human life, dealing in annuities, and the insurance of fidelity of persons holding places of public or private trust.
10. The insurance of human beings against sickness or personal injury.

11. The insurance of the lives of domestic animals or their loss or damage.

12. The insurance of property against marine risks.

13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation.

14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe keeping of all kinds of personal property.

15. The construction and maintenance of a railroad and of a telegraph line in connection therewith and a street railroad of any kind.

16. The construction and maintenance of any other species of roads, and of bridges in connection therewith.

17. The construction and maintenance of a bridge.

18. The construction and maintenance of a telegraph line, telephone or electric light line.

19. The establishment and maintenance of a line of stages.

20. The establishment and maintenance of a ferry.

21. The carriage of property and persons by express.

22. The building and navigation of steamboats and carriage of persons and property thereon.

23. The supply of water to the public.

24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.

25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical or chemical business.

26. The transaction of a printing and publishing business.

27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate.

28. The establishment and maintenance of a hotel.

29. The improvement of the breed of domestic animals by importation, sale or otherwise.

30. The transaction of the business of raising, buying and selling cattle, horses and sheep; or,

31. The construction of canals, ditches, flumes and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells.

No corporation must be formed for any other purposes than those mentioned in this section.

Orient I. Co. v. N. P. R. Co., 31 Mont. 510; subn. 25, 78 Pac. 1038. Under subdivision 25, a corporation may

be organized for the purpose of storing goods in a warehouse for shipment.

3809. (§ 394.) *Reservation of power to repeal.*—Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislative assembly.

Allen v. Ajax M. Co., 30 Mont. 503; 77 Pac. 49. When a mining company was organized between 1889 and 1898, the statute was made a part of its char-

ter, giving notice to all concerned that the legislature of Montana might at any time alter, amend or repeal the law under which it existed.

3810. (§ 395.) *Corporate existence cannot be questioned.*—One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

3811. (§ 396.) *Name.*—Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the name is to be deemed so far matter of description, that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

3812. (§ 397.) *Corporate name may be changed.*—That the name of any corporation now organized and existing or which may hereafter be organized under any of the statutes of this state relating to corporations may be altered, changed or amended by a vote of a majority of the stockholders of such corporation duly assembled at any regular meeting or at any special meeting duly called for that purpose. [Act approved March 2, 1893.]

3813. (§ 398.) *Record of change.*—Whenever the name of a corporation is changed, altered or amended under the provisions of this act it shall be the duty of the secretary thereof to certify the same for record to the secretary of state and to the county clerk of the county wherein the principal place of business of such corporation is situated. [Act approved March 2, 1893.]

3814. (§ 399.) *Corporate obligations not impaired by change.*—Nothing in this act contained shall impair or affect any liability or obligation of any corporation whose name is changed, altered or amended hereunder. [Act approved March 2, 1893.]

3815. (§ 400.) *How corporations may continue their existence under this code.*—Any corporation formed under the laws of the territory or state of Montana, except those dissolved by the provisions of § 393, and still existing, may at any time within the period limited for its duration elect to continue its existence under the provisions of this code applicable thereto. Such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must be filed in the office of the clerk of the county where the original articles

of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of state; and thereafter the corporation shall continue its existence under the provisions of this code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

Menard v. M. R. Co., 22 Mont. 346;
56 Pac. 594.

Murphy v. Bank, 119 Cal. 342; 51 P
ac. 317.

3816. *Existing corporations not affected.*—No corporation formed or existing before twelve o'clock noon on the first day of July A. D. 1895, when this Code takes effect is or shall be in any manner affected by any of the provisions of Part IV, of Division First of this Code, except those provisions which specifically mention and are made applicable to corporations formed and existing before said time, or unless such corporations elect to continue their existence under the provisions of this Code applicable thereto as provided in § 3815 (400) of this Code; but all the laws of the State of Montana in force and applicable to said previously formed and existing corporations at twelve o'clock noon on the said first day of July A. D. 1895, when this Code takes effect, shall continue to apply and govern such previously formed and existing corporations in all respects, as well in relation to their formation and existence as to their operation, management and all other matters and things contained in said laws and relating and applicable to such corporations, and said laws are repealed subject to the provisions of this section. [*Act approved March 5th, 1897.*] (5th Sess. 231.)

Menard v. Montana C. R. Co., 22
Mont. 350; 56 Pac. 596.

Western L. Co. v. S. B. A. Co., 31
Mont. 451; 78 Pac. 776.

3817. (§ 402.) *Name of instrument creating corporation.*—The instrument by which a private corporation is formed is called "Articles of Incorporation."

State v. Rotwitt, 18 Mont. 89; 44 Pac.
410.

People v. Lodge, 128 Cal. 260; 60 Pac.
865.

3818. (§ 403.) *Articles of incorporation, what to contain.*—Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding twenty years.
5. The number of its directors or trustees, which shall not be less than three nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

6. The amount of its capital stock and the number of shares into which it is divided, and if there be more than one class of stock, created by the Articles of Incorporation, a description of the different classes with the terms on which the respective classes are created. [*Act approved March 7, 1905, § 1.*] (9th Sess Chap. 102.)

7. If there is a capital stock the amount actually subscribed, and by whom.

8. If the stock is assessable it must be so stated.

3819. (§ 404.) *Certain corporations to state further facts in articles.*—The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall state as provided in § § 4147 (701) and 4148 (702) of this code.

2. And in articles of incorporation of institutions of learning, shall state as provided in § 4223 (752) of this code.

3. And in case of building and loan associations the corporation shall be formed as provided in § § 4190 et seq., inclusive, of this code.

4. In case of religious, benevolent and other like incorporations, the articles of incorporation shall state as provided in § 4226, of this code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, states, territories and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In the case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

3820. (§ 405.) *Three or more persons to sign and acknowledge articles.*—The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

Wall v. Mines, 130 Cal. 39; 65 Pac. 386.

3821. (§ 407.) *Certified copy of articles prima facie evidence.*—A copy of any articles of incorporation filed in pursuance

of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated.

Boca R. R. Co. v. Sierra R. Co., 2 C. App. 555; 86 Pac. 1134.

3822. (§ 408.) *Who are members and who are stockholders of corporations.*—The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the incorporators and their successors are called members.

Smith v. S. F. Co., 115 Cal. 593; 47 Pac. 582.

3823. (§ 409.) *Filing articles of incorporation.*—No corporation hereafter formed shall purchase, locate, or hold property in any county in this state, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of state, duly certified by such secretary of state, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this code or not, must, within ninety days after the passage of this code, file such certified copy of its articles of incorporation in the office of the county clerk of every county in this state in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceedings in relation to such property, its rents, issues, or profits, until such articles of incorporation and such certified copy of its articles of incorporation shall be filed at the places directed by the general law and this section; *Provided*, That all corporations shall be liable in damages for any and all loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; *and provided further*, That the said damages may be recovered in an action brought in any court of this state of competent jurisdiction, by any party or parties suffering the same.

San Diego v. Frame, 148 Cal. 253; 82 Pac. 1049.

3824. (§ 410.) *Stock issued for purchase of property.*—The directors of any corporation may purchase mines, manufactories and other property necessary for its business and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock

and not liable to any further call, neither shall the holders thereof be liable for any further payments under the provisions of § 3853 (470) this code; *Provided*, That on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value, full paid stock as above defined; and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock regardless of the actual value of the mine at the time of such purchase. In all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts. [*Act approved March 7, 1895.*]

3825. *Corporations, how formed.*—At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes, or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying, or otherwise disposing of water powers and the sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying or otherwise using or disposing of townsites or towns or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village, or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the development therefor of one or more of the aforesaid branches of business, or for any of the purposes for which private corporations may be formed, as set forth in Section 3808 (393) of this Code, must prepare, sign, acknowledge, and file articles of incorporation in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof certified by the county clerk, with the Secretary of state, whereupon the Secretary of State must issue to the corporation over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts has been filed in his office. Thereupon the persons signing the articles and their associates and successors, shall be a body politic and corporate by the name stated in the certificate, and for a term of forty years, unless in the articles of incorporation otherwise stated, or in this code otherwise specially provided, but in no case where not otherwise specially provided in this code, must such term exceed forty years; *provided, however*, that no articles of incorporation shall be accepted and filed by the Secretary of

State which designate a name for the proposed corporation which is the same as that of any existing domestic corporation, or which in the judgment of the Secretary of State is so similar to the name of any existing domestic corporation as to mislead or confuse persons dealing with such corporations; *and provided further*, that nothing herein shall affect the present term of existence of any corporation heretofore incorporated under this section for a period of forty years. [*Act approved March 7, 1907.*] (*10th Sess. Chap. 163.*)

3826. (§ 412.) *May extend term of existence and increase stock, etc.*—Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this chapter, may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purpose of the corporation, and may also extend its business to any other branch named in § 3825 of this chapter and may also extend the term of its existence, subject to the provisions and liabilities of this chapter; *Provided, however*, that no corporation shall have power under this chapter to extend the term of existence for a period longer than will make the terms of existence of said corporation longer in all than forty years from the date of its original incorporation; and before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under any special act may come under and avail itself of the provisions of this chapter, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this chapter. [*Act approved March 2, 1893.*]

3827. (§ 413.) *How change affected.*—Whenever any company shall decide to call a meeting of stockholders for the purpose of availing itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, or for extending the term of its existence, it shall be the duty of the trustees to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and

the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and the length of time for which it is proposed to extend the term of the existence of the corporation; and a vote of at least two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or the extension or change of its business, or the extension of the terms of its existence as aforesaid, or to enable the company to avail itself of the provisions of this chapter. [Act approved March 2, 1893.]

3828. (§ 414.) *Same.*—If, at the time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been cast in favor of increasing or diminishing the amount of the capital stock, or for extending or changing the business, or of extending the term of existence of the corporation as aforesaid, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the time for which the term of the existence of the corporation is extended, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed and recorded as required by § 3825 of this chapter, and when so filed and recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, and the term of the existence of the corporation extended as in said certificate specified, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter, as the case may be. [Act approved March 2, 1893.]

ARTICLE II.

BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

- Section 3829. *Adoption of by-laws, when, how, and by whom.*
“ 3830. *Directors, election of.*
“ 3831. *By-laws, may provide for what.*
“ 3832. *By-laws recorded and how amended.*

- Section 3833. How many and who to be directors.*
- “ 3834. *Directors must be elected and by-laws adopted at first meeting.*
- “ 3835. *Election, how conducted.*
- “ 3836. *Organization of board of directors, etc.*
- “ 3837. *Dividends to be made from surplus profits.*
- “ 3838. *Removal of directors.*
- “ 3839. *Justice of the peace may order meeting, when.*
- “ 3840. *Majority of stock must be represented.*
- “ 3841. *Stock of minors, etc.*
- “ 3842. *Election may be postponed.*
- “ 3843. *Complaints as to elections.*
- “ 3844. *False certificate, report or notice, officers liable.*
- “ 3845. *Meeting by consent valid.*
- “ 3846. *Proceedings at meeting to be binding.*
- “ 3847. *Meetings of stockholders and boards of directors, where held.*
- “ 3848. *Special meeting, how called.*
- “ 3849. *How corporation may change place of business.*
- “ 3850. *Annual statement.*
- “ 3851. *Payment for subscribed stock.*
- “ 3852. *Resignation of directors or officers of corporations.*

3829. (§ 430.) *Adoption of by-laws, when, how, and by whom.*—Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

Wells v. Black, 117 Cal. 162; 48 Pac. 1090.

3830. (§ 431.) *Directors, election of.*—The directors must be elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the

election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in § 3829 (430).

Glass v. Basin Co., 31 Mont. 31; 77 Pac. 304. A contract by which it was agreed that certain persons should be trustees until the business of a mining corporation should be in successful oper-

ation is contrary to this section and void.

Middleton v. Arastraville Co., 146 Cal. 222; 79 Pac. 889.

3831. (§ 432.) *By-laws, may provide for what.*—A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election of directors, and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

People's Bank v. Sadler, 1 C. App. 195; 81 Pac. 1029.

3832. (§ 433.) *By-laws recorded and how amended.*—All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "Book of By-Laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during the office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two thirds of the stock, or two-thirds of the members, if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws, with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the

date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

3833. (§ 434.) *How many and who to be directors.*—The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Middleton v. Arastraville Co., 146 Cal. 222; 79 Pac. 889.

3834. (§ 435.) *Directors must be elected and by-laws adopted at first meeting.*—At the meeting at which the by-laws are adopted or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

3835. (§ 436.) *Election, how conducted.*—All elections must be by ballot; and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in § 3840 (441) of this code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

Krause v. Durbrow, 127 Cal. 683; 60 Pac. 438.

3836. (§ 437.) *Organization of board of directors, etc.*—Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the

transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

Curtin v. Salmon R. Co., 130 Cal. 348; 62 Pac. 552.

3837. (§ 438.) *Dividends to be made from surplus profits.*—The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Porter v. Plymouth M. Co., 29 Mont. 355; 74 Pac. 939. The repurchase of capital stock by a corporation does not decrease it unless the directors extinguish it after its purchase. It is presumed that

directors do not decrease the capital stock on repurchasing it.

Schaake v. Eagle Co., 135 Cal. 482; 63 Pac. 1025.

3838. (§ 439.) *Removal of directors.*—No director shall be removed from office unless by a vote of two thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in § 3829 (430) of this title, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting.

3839. (§ 440.) *Justice of the peace may order meeting when.*—Whenever, from any cause, there is no person authorized to call or to preside at the meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

3840. (§ 441.) *Majority of stock must be represented.*—At all elections or votes had for any purpose there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representative, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of the proceedings of the board of directors.

Krause v. Durbrow, 127 Cal. 683; 60 Pac. 438.

3841. (§ 442.) *Stock of minors, etc.*—The shares of stock of an estate of a minor, or person of unsound mind, may be represented by his guardian, and of a deceased person by his executor or administrator.

Market R. Co. v. Hellman, 109 Cal. 590; 42 Pac. 225.

3842. (§ 443.) *Election may be postponed.*—If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in § 3838 (439) of this article.

3843. (§ 444.) *Complaint as to elections.*—Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or

otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.

Whitehead v. Sweet, 126 Cal. 72; 58 Pac. 376.

3844. (§ 445.) *False certificate, report or notice, officers liable.*—Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

Giddings v. Holter, 19 Mont. 264; 48 Pac. 8. The trustees of a corporation who filed a report, which did not specify as a debt of the company its liability on a covenant of title, are not liable for a false report, if the breach of the covenant was not known to them at the

time the report was filed. Such report is not false in stating that the capital stock was paid in full when the property for which it was issued has decreased in value. Such trustees, who file a false report, are not liable for the debts of the corporation theretofore contracted.

3845. (§ 446.) *Meeting by consent valid.*—When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

3846. (§ 447.) *Proceedings at meeting to be binding.*—The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

3847. *Meetings of stockholders and board of directors; where held.*—The meetings of the stockholders of a corporation must be held at its office or principal place of business in the State of Montana, except as hereinafter provided. The meetings of the Board of Directors or Trustees of all corporations heretofore or hereafter organized under any of the laws of the State of Montana may be held either within or without the State of Montana at such place or places as may be designated by the by-laws of such corporations. In case the meetings of the Board of Directors or Trustees of a corporation shall be held outside of the State of Montana, either the original or full and complete copies or duplicate of all proceedings had at such meeting or meetings certified by the President and Secretary under seal shall be sent to and kept at the principal office or place of business of the

corporation in Montana, and shall be part of the records in Montana. The meetings of the stockholders, of all corporations organized in conformity with the requirements of the laws of the United States and of the State of Montana for the purpose of furnishing water only to its stockholders, called for the purpose of electing Directors, may be held in the several Director Districts of such corporation, at such place in each Director District as may be designated by the Board of Directors, and no share holder shall be permitted to vote at any such share holders meeting except the meeting held in the Director District as may be fixed by the by-laws of said corporation. [*Act approved March 7, 1907.*] (10th Sess. Chap. 151.)

3848. (§ 449.) *Special meeting, how called.*—When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

Bell v. Standard Co., 146 Cal. 705; 81 Pac. 17.

3849. (§ 450.) *How corporation may change place of business.*—Every corporation that has been or may be created under the general laws of this state may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this state, and may increase or diminish the number of its trustees or directors; *Provided*, That the number of trustees or directors shall at no time be less than three or more than thirteen. Before either such changes are made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change, or of the intended increase or diminishment of the number of trustees or directors, as the case may be, must be published at least once a week for three successive weeks in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it, or the number to which it is intended to increase or diminish the trustees or directors. [*Act approved March 18, 1895.*]

Chapman v. Doray, 89 Cal. 54; 26 Pac. 605

3850. *Annual statement.*—Every domestic corporation, having a capital stock, shall annually, within twenty days from and after the thirty-first day of December, file, in the office of the clerk of the county in which the principal place of business of such corporation is situated, a report which shall state the amount of the capital stock, the proportion thereof actually paid

in and the amount thereof actually paid in cash and the amount issued, if any, in payment of property purchased and the amount of existing debts and also the names and addresses of the directors or trustees and of the president, vice-president, general manager and secretary of the corporation. Such report shall be signed by the president and a majority of the directors, inclusive of the president, secretary or treasurer of such corporation. In the absence, or inability to act, of the president, the vice president may sign and verify such report. If any such corporation shall fail to file such report, the directors of the corporation shall be, jointly and severally, liable for all debts or judgments of the corporation then existing, or which may thereafter be, or in any wise incurred, until such report shall be made and filed; *provided, however*, that if within ten days after such failure a director, or directors, shall make and file, as aforesaid, an affidavit or affidavits, stating that the failure was due to no fault or neglect of his or theirs, and stating, also, that, within the said twenty days, he or they requested the president or sufficient number of the other directors, whose residence was known to affiants, to join them in making report, such director, or directors, shall not be liable under this Section. If the required report be made and filed after the time herein specified, the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted. Where such corporation, on account of insolvency or for any other reason, has ceased to be a going concern and has ceased to voluntarily incur financial obligations, the directors may include a statement to that effect in their report, giving the reasons for the cessation of the corporate activities of such corporation, and, after two annual reports have been filed, the directors shall not be liable for a failure to file annual reports during such time as the disability of such corporation shall continue. [Act approved March 2, 1907.] (10th Sess. Chap. 63.)

3851. (§ 452.) *Payment for subscribed stock.*—It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

3852. *Resignation of directors or officers of corporations.*—Any director, trustee or other officer of a corporation, may resign

his office by delivering to the secretary or president of the corporation, or depositing in the post-office, in an envelope securely sealed, with the necessary amount of postage prepaid thereon, and addressed to the corporation, at its principal place of business, his written resignation, and filing in the office of the clerk and recorder of the county where the principal office or place of business of the said corporation is situated, a duplicate of the said resignation, together with an affidavit of the delivery or mailing of said resignation, as above specified, or an acknowledgment of service thereof and by publishing in two consecutive issues of the official paper of the county where said company may be doing business, a notice of said resignation, and the director, trustee, or other officer shall upon such filing and publication no longer be responsible for any act or default of the corporation, or of the other officers thereof, occurring after the date of said filing, *provided, however*, that any director, trustee, or other officer, shall also comply with the by-laws of the corporation relating to resignations of directors or officers. This act shall apply to resident directors of foreign corporations having a place or places of business in this state, as well as to directors and other officers of domestic corporations. [Act approved March 5, 1907.] [10th Sess. Chap. 90.)

CHAPTER II.

CORPORATE STOCK.

ARTICLE I. STOCK AND STOCKHOLDERS.

II. ASSESSMENT OF STOCK.

ARTICLE I.

STOCK AND STOCKHOLDERS.

- Section 3853. Liability of stockholders.*
- “ 3854. *Certificates, how and when issued.*
- “ 3855. *Transfer of shares. When title passes.*
- “ 3856. *Same by married woman, and dividends.*
- “ 3857. *Non-resident stockholders, and bonds.*
- “ 3858. *Five per cent. of stock may demand statement.*
- “ 3859. *Loan to stockholders.*
- “ 3860. *Stock certificates may be issued to bearer.*
- “ 3861. *Foreign registry. Proxy.*
- “ 3862. *Notice of meetings waived.*
- “ 3863. *Bearer may vote.*
- “ 3864. *Dividends payable to bearer.*
- “ 3865. *Bearer certificates convertible into registered certificates.*
- “ 3866. *Corporation may adopt necessary by-laws.*

3853. (§ 470.) *Liability of stockholders.*—The stockholders of every corporation shall be severally and individually liable to

the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in.

3854. (§ 471.) *Certificates, how and when issued.*—All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

Vermont Co. v. Declez Co., 135 Cal. 583; 67 Pac. 1057.

3855. *Transfer of shares. When title passes.*—That the delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same, or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against the creditors of the transferor and subsequent purchasers; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been transferred. [Act approved March 7, 1907.] (10th Sess. Chap. 143.)

3856. (§ 473.) *Same by married woman, and dividends.*—Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent, or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman touching any shares of stock of any corporation owned by her is valid and binding without the signature of her husband, the same as if she were unmarried.

3857. (§ 474.) *Non-resident stockholders, and bonds.*—When the shares of stock in a corporation are owned by persons residing out of the state, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the

officers of the corporation, or, if not so satisfactory, then one approved by the judge of the district court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

3858. (§ 475.) *Five per cent. of stock may demand statement.*—Whenever any person or persons owning five per cent, of the capital stock of any corporation, shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder or said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

3859. (§ 476.) *Loan to stockholders.*—No loan of money shall be made by any corporation to any stockholder therein, and if such loan be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

3860. *Stock certificate may be issued to bearer.*—Any corporation now existing or hereafter created or organized under or by virtue of the laws of the State of Montana and having a capital stock non-assessable and fully paid within the meaning of the laws of this State, and whose object or purpose, in whole or in part, is to carry on the business of mining within this State, shall have the power to and may, by a vote of its stockholders, holding at least three-fourths of its capital stock, authorize or

provide for the transfer and issue of certificates of stock which shall entitle the holder or bearer to the ownership of the same upon delivery and without transfer by endorsement or on the books of such corporation, subject, however, to the by-laws of the corporation and the provisions of this Act, but no such transfer or issue shall be made except upon surrender and cancellation of the certificate or certificates so to be transferred; and all bearer certificates so issued shall be delivered to and receipted for on the books of the Company, by the stockholder or his authorized agent at whose request such transfers shall be made; and thereafter, so far as the corporation is concerned, the bearer of any such bearer certificate shall for all purposes except that of holding office, be deemed a stockholder of the Company, owning and holding the number of shares of its capital stock represented by such bearer certificate, and the stock or shares thereby represented shall be listed to bearer on the list of stockholders and other books of the Company. [*Act approved March 8th, 1897, § 1. (5th Sess. 69.)*]

3861. *Foreign registry. Proxy.*—Any corporation which shall have issued bearer certificates may establish agencies in other States and in foreign countries whereat holders or bearers of bearer certificates may, under such regulations as the corporation shall prescribe, register and deposit their bearer certificates of stock for voting purposes. Such corporation shall have the right to appoint and prescribe the duties of, fix the compensation and remove at pleasure its agent or agents at such agencies, and also to establish rules and regulations for registering and depositing bearer certificates of stock, and may at any time close up or terminate any such agency. Whenever at any meeting of the stockholders of such corporation for election or other purposes any such agent shall certify to the corporation in such manner as it may prescribe, that there is registered and deposited with him, to be held by him until after the meeting for which such registration and deposit shall have been made, a bearer certificate or certificates describing each by its face number, number of shares represented and date of issue, and stating when and by whom deposited, the person who shall have made such deposit, may, in writing attested by such agent, appoint some suitable person to represent him at such meeting as his proxy and there vote the shares of stock represented by his said bearer certificate or certificates so deposited; and thereupon the person to whom such proxy shall have been given may vote the shares of stock represented by such bearer certificate or certificates in all matters and things upon which votes are cast or had at such meeting. [*Act approved March 8th, 1897, § 2. (5th Sess. 69-70.)*]

3862. *Notice of meetings waived.*—It shall not be necessary for the corporation or its officers or trustees or directors to give

any personal notice or notice by mail to holders or bearers of such bearer certificates of any meeting of stockholders for the purpose of electing trustees or directors, or for any other purpose or of any action taken or proposed to be taken by such corporation or its stockholders or its trustees or its directors at any meeting, but such notice may, in every case, be given to such holders or bearers of bearer certificates by publication in a newspaper as now provided by law and shall be valid and binding. Every holder of a bearer certificate shall be held to have waived any notice of any stockholders meeting for any purpose, or of any action or proposed action of the corporation or its stockholders or trustees or directors except by publication in some newspaper when it is required by law. [*Act approved March 8th, 1897, § 3.*] (5th Sess. 70.)

3863. *Bearer may vote.*—Except as herein provided stock or shares of stock represented by a bearer certificate can only be voted or represented by actual production of such bearer certificate at the time of voting or representation and by the bearer thereof. In all cases the actual production of a bearer certificate shall, so far as the corporation is concerned be conclusive evidence of the bearer's right to vote or represent the shares it represents. [*Act approved March 8th, 1897, § 4.*] (5th Sess. 70.)

3864. *Dividends payable to bearer.*—Dividends to holders of bearer certificates shall only be paid to the bearers thereof upon production of such certificates, except where such certificates of stock have attached to them dividend coupons payable to bearer, in which case dividends may be paid to the bearer of the proper dividend coupon upon its presentation and surrender without the production of the certificate to which such dividend coupons belonged. [*Act approved March 8th, 1897, § 5.*] (5th Sess. 70-1.)

3865. *Bearer certificates convertible into registered certificates.*—Bearer certificates may at any time be converted into registered certificates such as are now provided for by law, upon the request of the bearer of such bearer certificates and the surrender of such bearer certificates to the corporation and the cancellation thereof; and registered certificates may also be converted and exchanged for bearer certificates at the request of the owners of such registered certificates and the surrender and cancellation thereof. [*Act approved March 8th, 1897, § 6.*] (5th Sess. 71.)

3866. *Corporation may adopt necessary by-laws.*—The corporation may do all acts and adopt all by-laws and resolutions necessary or proper to carry into effect the powers herein granted and to provide for details in the exercise thereof, subject, however, to the provisions of this Act. [*Act approved March 8th, 1897, § 7.*] (5th Sess. 71.) 1121

ARTICLE II.

ASSESSMENT OF STOCK.

- Section 3867. *Directors may levy assessment.*
 " 3868. *Limitation.*
 " 3869. *Levy of assessment; unpaid assessment.*
 " 3870. *Contents of order for assessment.*
 " 3871. *Notice of assessment, form.*
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 " 3873. *Delinquent notice, form.*
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 " 3877. *Sale to be at public auction.*
 " 3878. *Highest bidder to be purchaser.*
 " 3879. *Corporation may purchase in default of bidder.*
 " 3880. *Disposition of stock purchased by corporation.*
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 " 3884. *Affidavits to be filed.*
 " 3885. *Waiver of sale.*
 " 3886. *To what corporations applicable.*
 " 3887. *Other corporations may make stock assessable.*
 " 3888. *Stock may be made assessable.*

3867. (§ 490.) *Directors may levy assessment.*—The directors of any corporation formed or existing under the laws of this state, may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

3868. (§ 491.) *Limitation.*—No one assessment must exceed five per cent. of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

Pacific Co. v. Coon, 107 Cal. 450; 40 Pac. 542.

3869. (§ 492.) *Levy of assessment; unpaid assessment.*—No assessment must be levied while any portion of a previous one remains unpaid, unless—

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of § 3868 (491).

3870. (§ 493.) *Contents of order for assessment.*—Every order levying an assessment must specify the amount thereof, when, to whom, and where payable, fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

San Bernardino Co. v. Merrill, 108 Cal. 493; 41 Pac. 487.

3871. (§ 494.) *Notice of assessment, form.*—Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

San Joaquin Co. v. Beecher, 101 Cal. 81; 35 Pac. 349.

3872. (§ 495.) *Publication and service.*—The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

3873. (§ 496.) *Delinquent notice, form.*—If any portion of the assessment mentioned in the notice remains, unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)
Notice.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts), and in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

Stockton Works v. Houser, 109 Cal. 8; 41 Pac. 809.

3874. (§ 497.) *Contents of notice.*—The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

3875. (§ 498.) *How published.*—The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

San Bernardino Co. v. Merrill, 108 Cal. 493; 41 Pac. 487.

3876. (§ 499.) *Jurisdiction acquired, how.*—By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

3877. (§ 500.) *Sale to be at public auction.*—On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bidder for

cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

3878. (§ 501.) *Highest bidder to be purchaser.*—The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

3879. (§ 502.) *Corporation may purchase in default of bidder.*—If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

3880. (§ 503.) *Disposition of stock purchased by corporation.*—All purchases of its own stock made by any corporation vest the legal title to the same in the corporation and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

Market R. Co. v. Hellman, 109 Cal. 588; 42 Pac. 225.

3881. (§ 504.) *Extension of time of delinquent sale.*—The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

3882. (§ 505.) *Assessment shall not be invalidated.*—No assessment is invalidated by a failure to make publication of the

notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

San Bernardino Co. v. Merrill, 108 Cal. 495; 41 Pac. 487.

3883. (§ 506.) *Action for recovery of stock, limitation.*—No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

Herbert Bank v. Orland Bank. 133 Cal. 66; 65 Pac. 143.

3884. (§ 507.) *Affidavits to be filed.*—The publication of notice required by this article must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof.

3885. (§ 508.) *Waiver of sale.*—On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

Turner v. Fidelity L. Co. 2 Cal. App. 136; 83 Pac. 62.

3886. (§ 509.) *To what corporations applicable.*—The provisions of this article only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

3887. (§ 510.) *Other corporations may make stock assessable.*—Any corporation whose capital stock is not assessable may, with the consent of three-fourths of its stockholders, in writing, spread upon the records of such corporation, make its stock assessable under the provisions of this article. The board of directors of any corporation, where such corporation desires to avail itself of the provisions of this article, shall file and have recorded in the

office of the secretary of state, and of the county clerk of the county where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock of such corporation has been made assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this article.

3888. (§ 511.) *Stock may be made assessable.*—Any corporation heretofore formed under the laws of this state, may, by and with the consent of the stockholders holding two-thirds of the stock of the company, in writing, spread upon the records of such corporation, render its stock assessable, under the provisions of this chapter. The board of trustees of any corporation heretofore formed under the laws of this state, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the secretary of state and of the county clerk and recorder, where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock has been rendered assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this chapter. [Act approved March 7, 1893.]

CHAPTER III.

CORPORATE POWERS.

- ARTICLE I. GENERAL POWERS.
 II. RECORDS.
 III. RIGHT TO REPEAL LAWS.

ARTICLE I.

GENERAL POWERS.

- Section 3889. *Powers of corporations.*
 “ 3890. *Limitation of powers.*
 “ 3891. *Issuing bills prohibited.*
 “ 3892. *Corporations to organize within one year.*
 “ 3893. *Consolidation not to make foreign corporation.*
 “ 3894. *Decrease or increase of stock or extending business, how.*
 “ 3895. *May acquire real property, how much.*
 “ 3896. *Consolidation of mining corporations.*
 “ 3897. *Corporation may sell all of its property; procedure.*
 “ 3898. *Dissolution upon sale.*
 “ 3899. *Rights of dissenting stockholders.*
 “ 3900. *Appeal from appraisalment.*
 “ 3901. *Not to affect mining statute.*

3889. (§ 520.) *Powers of corporations.*—Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated or expressed in the Articles of Incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended Articles of Incorporation shall so provide, no corporation shall create preferred stock. [*Act approved March 7, 1905, § 3.*] (*9th Sess. Chap. 102.*)

People's Bank v. Sadler, 1 C. App. 195; 81 Pac. 1029.

3890. (§ 521.) *Limitation of powers.*—In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

3891. (§ 522.) *Issuing bills prohibited.*—No corporation shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

3892. (§ 523.) *Corporations to organize within one year.*—If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the state on information of the attorney general.

People v. Rosenstein Co., 131 Cal. 154; 63 Pac. 163.

3893. (§ 524.) *Consolidation not to make foreign corporations.*—If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this state, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise as if said consolidation had not taken place.

3894. (§ 525.) *Decrease or increase of stock or extending business, how.*—No corporation shall issue stocks or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. Every corporation may increase or diminish its capital stock, or create or increase its bonded indebtedness, or extend or change its business, subject to the foregoing provision of this section, at a meeting called by the directors for the purpose, as follows:

1. Notice of the time and the place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock and the extension or change proposed in its business, must be personally served on each stockholder resident in the state, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business once a week for six weeks successively.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase, diminution, extension or change, before it can be effectual.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, or the extension or change of business provided for, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the capital shall be so increased or diminished, or the business so extended or changed, or the bonded indebtedness may be increased accordingly.

Boyd v. Heron, 125 Cal. 454; 58 Pac. 64.

3895. (§ 526.) *May acquire real property, how much.*—No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A corporation may acquire real property as provided in the Code of Civil Procedure, title VII., part III.

State v. Court, 34 Mont. 539; 88 Pac. 46. The changing of the channel of a river is a part of the construction of a railroad and authority to secure land necessary to make such change is con-

ferred, and such land may be secured by condemnation proceedings.

Helena Power Co. v. Spratt, 35 Mont. 129; 88 Pac. 773.

3896. (§ 527.) *Consolidation of mining corporations.*—It is lawful for two or more corporations formed under the laws of Montana territory, or of the state, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation relieves such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county and state where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, must be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations are filed, and a copy thereof filed in the office of the secretary of state; such certificate must

be signed by a majority of each board of directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of directors for the consolidated corporation, for the year next ensuing. The said certificate must also contain all the requirements prescribed by § 3818 (403) of this code. This section applies to all corporations formed under the laws of this state, or territory of Montana whether formed under this code or prior thereto.

MacGinniss v. B. & M. Co., 29 Mont. 460; 75 Pac. 98. Mining corporations may convey their property to a corporation organized for the purpose, or may

purchase the whole or part of the capital stock of other mining corporations.

Isom v. Rex Co., 147 Cal. 666; 82 Pa. c. 319.

3897. *Corporation may sell all of its property; procedure.—*

That the Board of Directors or Trustees of any stock corporation organized under the laws of either the Territory or State of Montana, whether before or after the passage of this Act and whether the same is solvent or insolvent, or whether it is a going or prosperous concern or otherwise, shall have power, and upon request of stockholders of the corporation representing at least one-half of the outstanding capital stock, and of record on the books of the company, it shall be their duty to call, by resolution, a meeting of the stockholders of such corporation, appearing as such upon the books of the corporation, for the purpose of considering the question of selling, or disposing of the whole or any part of the property and assets of every kind and description of such corporation. Such meeting shall be held at the principal office or place of business of such corporation, and at least thirty days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation. The secretary of the corporation shall make out and deposit in the United States Post Office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation by his name and to his place of residence appearing on said records, and shall make and file this affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the Post Office, as above required, and it shall state the time and place of meeting and that the meeting is to consider and decide upon the question of disposing of, or selling the whole or any part of the property of said corporation. If such meeting is called for the purpose of selling, or disposing of the whole of the property of the corporation, the notice shall so state, but if it is for the purpose of selling or otherwise disposing of only a part of the property of the corporation, the notice shall so state and describe generally what part it is. A similar notice shall also be published, at least once a week for at least four successive weeks preceding the day of the stockholders' meeting, in some newspaper of general circulation

published at or near the office or principal place of business of such corporation, or if there is no newspaper published in said place, then the nearest place thereto where a newspaper is published, and said publication shall be proven by affidavit of the publisher or clerk of such newspaper, filed with the Secretary of such corporation. Upon the day appointed for said meeting, if stockholders representing at least two-thirds of the whole number of shares of the capital stock of the corporation then outstanding and of record on the books of the company, appear in person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one of their number chairman and some suitable person secretary. Thereupon, any proposition for the sale or disposition of the whole or any part of the property or assets of the corporation, of every kind or description, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the company, appearing at said meeting in person or by agents or proxies as above provided, vote in favor of any such proposition, whether proposed by the directors or trustees or not, as the stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation and shall be carried out as such and shall be approved and adopted by the Board of Directors or Trustees. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the number of shares voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred to, by the stockholders' meeting, the secretary of the meeting shall make out a true and complete copy of the minutes of the Stockholders' meeting, which shall be signed by the chairman of such meeting and attested by said secretary and verified by them and acknowledged as required in the case of the conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the office of the county clerk and recorder of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated, and said record shall impart notice and have the same effect as other instruments required by law to be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein

stated, and thereupon, and upon the adoption and approval by the Board of Directors or Trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or their instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, or conveyance of the whole or any part of the property of said corporation authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto. *Provided*, that nothing contained in this Act shall be deemed to limit or restrict the powers of the Board of Directors or Trustees of such corporations in relation to the disposition of property or the conduct of business. *Provided further*, that this Act shall not be so construed as to effect any cases now pending in the courts of this state or of the United States. [Act approved March 7, 1905.] (9th Sess. Chap. 103.)

3898. *Dissolution*.—If a disposition shall be made by sale, as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations. [Act approved March 7, 1905, § 2.] (9th Sess. Chap. 103.)

3899. *Rights of dissenting stockholders*.—Any stockholder who shall not, at said stockholders' meeting, have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting may, within twenty days after the date of the stockholders' meeting, give written notice to the said corporation that he does not assent thereto and also a like notice to the grantee or vendee, or any agent or representative of such grantee or vendee; *provided*, that such grantee or vendee, or agent or representative of such grantee or vendee be within the state, and demand payment of the value of his stock, and within ten days after service of said notice he must, or the said corporation, or its grantee or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days previous notice must be given by the person so applying to the other parties. The notices hereinbefore provided for may be served in the manner provided by law for the service of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of

appraisers, occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of said appraisal shall be paid by the corporation or its grantee or vendee. [*Act approved March 7, 1895, § 3.*] (*9th Sess. Chap. 103.*)

3900. *Appeal from appraisal.*—Either party to the appraisal and award of such appraisers may, within thirty days from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be re-assessed by a jury in the same manner as appeals are taken and trials had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisal or award shall become final, the court shall enter judgment in favor of such dissenting stockholders and against the corporation and its grantee or vendee for the amount of said award, with expenses and costs of proceedings and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisal and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stockholders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all such property; but the claims of all dissenting stockholders for compensation and their several appraisements, awards and judgment, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisements and costs shall have been paid to or collected by such dissenting stockholder or deposited with the clerk of the said court for him, he shall cease to have any interest in said stock or in the corporate property of such corporation which may have been sold or disposed of in pursuance of the resolution of the stockholders' meeting as herein provided, and the stock of such dissenting stockholders shall thereupon become the property of the party satisfying the said judgment or appraisal unless otherwise provided for by contract between such corporation and its grantee. [*Act approved March 7, 1905, § 4.*] (*9th Sess. Chap. 103.*)

3901. *Not to affect mining statute.*—Nothing in this Act shall be deemed to limit or effect anything contained in the act of the

sixth session of the Legislative Assembly, entitled House Bill No. 132: "An Act to enlarge the powers of mining corporations to dispose of, sell, lease, mortgage, exchange, or otherwise convey, all or any part of the property of such corporations, and to authorize and empower such corporations to dispose of, sell, lease, mortgage, or otherwise convey, the whole or any part of the property of such corporations, and to protect stockholders dissenting from such actions of such corporations." (Sec. 4409 et seq. *infra*.) [Act approved March 7, 1905, § 5.] (9th Sess. Chap. 103.)

ARTICLE II.

RECORDS.

Section 3902. Records of what, and how kept.

" 3903. *Other records to be kept by corporations for profit, and others.*

3902. (§ 540.) *Records of what, and how kept.*—All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member or stockholder, to any action or proposed action must be entered in full; and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation.

Middleton v. Arastraville Co., 146 Cal. 223; 79 Pac. 889.

3903. (§ 541.) *Other records to be kept by corporations for profit, and others.*—In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied, and paid and unpaid, a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

Knowles v. Sandercock, 107 Cal. 636; 40 Pac. 1047.

ARTICLE III.

RIGHT TO REPEAL LAWS.

3904. (§ 550.) *Chapter and article may be repealed.*—The Legislative Assembly may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

Allen v. Ajax M. Co., 30 Mont. 504; 77 Pac. 49.

CHAPTER IV.

EXTENSION, AND DISSOLUTION OF CORPORATIONS.

Section 3905. *Proceedings to disincorporate.*

“ 3906. *On dissolution, directors to be trustees for creditors.*

“ 3907. *Any corporation may extend its corporate existence, how.*

“ 3908. *Title I. to apply to all corporations with certain exceptions.*

3905. (§ 560.) *Proceedings to disincorporate.*—A corporation is dissolved:

1. By the expiration of the time limited by its charter; or,
2. By a judgment of dissolution, in the manner provided by the Code of Civil Procedure, title VI., part III., and chapter V., of title X., part II.
3. By an act of the Legislative Assembly.

Tore v. Court, 108 Cal. 436; 41 Pac. 477.

3906. (§ 561.) *On dissolution, directors to be trustees for creditors.*—Unless other persons are appointed by the court, the directors of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and as such trustees are authorized to execute all grants of real estate owned by such corporation.

Ferrell v. Evans, 25 Mont. 454; 65 Pac. 718. A receiver should not be appointed to take charge of a building and loan company, when the directors are acting as trustees to wind up its affairs, after its charter has expired, un-

less it appears that the party complaining has been, or is about to be injured by unwarranted procedure on the part of such trustees.

State Co. v. San Francisco, 101 Cal. 147; 35 Pac. 549.

3907. (§ 562.) *Any corporation may extend its corporate existence, how.*—Every corporation formed for a period less than twenty years may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding twenty years from its formation. And every corporation may

extend the period of its existence for an additional term not exceeding twenty years, after the expiration of the period for which it was formed, as follows: Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members, or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and a majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of state, and thereupon the term of the corporation shall be extended for the specified period.

3908. (§ 563.) *Title I. to apply to all corporations with certain exceptions.*—The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

Helena Power Co. v. Spratt, 35 Mont.
129: 88 Pac. 773.

People v. Auburn Co., 122 Cal. 339;
55 Pac. 10.

TITLE II.

BANKS AND BANKING CORPORATIONS.

- CHAPTER I. BANKS OF DISCOUNT AND DEPOSIT.
 II. TRUST DEPOSIT AND SECURITY COMPANIES.
 III. SAVINGS BANKS.
 IV. ENDOWMENT AND INVESTMENT COMPANIES.
 V. FOREIGN BANKING CORPORATIONS.
 VI. REGULATION OF BANKING CORPORATIONS.

CHAPTER I.

BANKS OF DISCOUNT AND DEPOSIT.

- Section 3909. *Incorporation of banks of discount and deposit.*
 “ 3910. *Bank not to purchase its own stock; exception.*
 “ 3911. *Powers.*
 “ 3912. *Directors.*
 “ 3913. *Purchase of real estate.*
 “ 3914. *Conveyance of real estate.*
 “ 3915. *Liability of stockholders.*
 “ 3916. *Dividends from net earnings.*

Section 3917. Book containing names of stockholders.

“ 3918. *Increase of capital stock.*

“ 3919. *Forfeiture of franchise.*

“ 3920. *Limit of liability.*

“ 3921. *Reserve.*

“ 3922. *Taxation.*

3909. (§ 570.) *Incorporation of bank of discount and deposit.*—Any number of persons, not less than three nor more than thirteen, may associate together to establish a bank of discount and deposit, and become incorporated upon the terms and conditions, and subject to the liabilities prescribed in this title, but the aggregate of the amount of the capital stock of any such corporation shall not be less than twenty thousand dollars. No bank organized under the provisions of this title shall transact any business until its capital stock has been paid into the treasury of such bank in cash, and until a certificate to that effect under oath of the president and cashier is filed in the office of the state auditor, and in the office of the county clerk in the county where such bank is located, nor must any such bank transact any business except as is incidental and necessarily preliminary to its organization until it has been authorized by the state auditor to commence the business of banking, which authorization shall be a certificate under his hand and official seal that such bank has complied with the provisions of this title and is authorized to commence the business of banking. The bank shall cause the certificate and authorization of the state auditor to be published in some newspaper published in the town or county where the corporation is located, for at least four insertions immediately after the issuing thereof.

3910. (§ 571.) *Bank not to purchase its own stock; exception.*—The name of such bank to be used in all its dealings, must not be that of any other incorporated bank in the state. No private bank must use any corporate name, and no bank must be the holder or purchaser of any portion of its own stock or of the capital stock of any other incorporated company unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, on security, which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock; and stock so purchased must in no case be held by the bank so purchasing for a longer period of time than six months, if the same can be sold for what the stock cost, or at par.

3911. (§ 572.) *Powers.*—Such bank when so organized has power to carry on the business of banking by discounting on banking principles upon such securities as the directors or trustees deem expedient; by receiving deposits; by buying or selling the bonds or stock of this state or any other state or territory of

the United States; also the bonds of any county, city, town or school district in this state legally authorized to issue such bonds; gold and silver bullion; foreign coins and bills of exchange; by loaning money on real and personal security, and by exercising such incidental powers as may be necessary to carry on such corporation or business.

3912. (§ 573.) *Directors.*—The stockholders must elect from their number not to exceed thirteen directors, who may choose from their number a president and vice-president, and appoint a cashier, teller, and such other officers and agents as their business may require, and remove such officers at their pleasure and appoint others. The first directors hold their office until the first Monday in January next after their election or appointment, and until their successors are elected and qualified, and all subsequent elections must be held on the first Monday in January of each year. The directors are authorized to adopt such by-laws not in conflict with this part as may be necessary. The directors must be citizens of the United States, and at least three-fourths of them must be residents of the state. Every director must own in his own right at least ten shares of the capital stock of the bank, and any director who ceases to be the owner of at least ten shares or who becomes in any other manner disqualified, thereupon ceases to be a director, and his place must be filled until the next election by the directors. Each director, when appointed or elected, must take an oath that he will, so far as the duties devolve upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this title.

3913. (§ 575.) *Purchase of real estate.*—It is lawful for any such corporation to purchase, hold, or convey real estate as follows:

1. Such as is necessary for the proper transaction of business.
2. Such as is mortgaged to it in good faith by way of security for loans previously made by or moneys due to the corporation.
3. Such as is conveyed to it in satisfaction of debts previously contracted in the course of its business.
4. Such as it purchases at sales under judgments, decrees, or mortgages held by the corporation.

3914. (§ 576.) *Conveyance of real estate.*—Every conveyance of real estate by such corporation must be authorized by the board of directors, and must be made by an instrument under the hand of the president, or vice president and cashier of said bank, with the seal of the corporation affixed thereto, and duly acknowledged by them.

3915. (§ 578.) *Liability of stockholders.*—The officers and stockholders of every banking corporation formed under the provisions of this title are individually liable for all debts contracted

during the term of their being officers or stockholders of such corporation equally and rateably to the extent of their respective shares of stock in any such corporation, except that when any stockholder shall sell and transfer his stock such liability shall cease at the expiration of six months from and after the date of such sale and transfer.

3916. (§ 579.) *Dividends from net earnings.*—No banking corporation shall declare any dividend except from the net earnings after deducting all losses.

3917. (§ 580.) *Book containing names of stockholders.*—Every corporation doing a banking business in this state must keep in its office, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book, containing a list of all stockholders in such corporation, and the number of shares of stock held by each; and every such corporation must keep posted in its office, in a conspicuous place, accessible to the public generally, a notice, signed by the president or secretary, showing:

1. The names of the directors of such corporation.

2. The number and value of shares of stock held by each director. The entries on such book, and such notice, shall be made and posted within twenty-four hours after any transfer of stock, and shall be conclusive evidence against each director and stockholder of the number of shares of stock held by each. The provisions of this section shall apply to all banking corporations, formed or existing before twelve o'clock, noon, of the day on which this code takes effect, as well as to those formed after such time.

3918. (§ 581.) *Increase of capital stock.*—It is lawful for any corporation organized under the provisions of this title, by their by-laws to provide for an increase of their capital stock, but no such increase shall be valid until the whole amount of such increase is paid in cash, and such payment certified under oath by the president or cashier to the state auditor, who shall give his certificate specifying the amount of such increase, with his approval thereof, and that it has been duly paid in as a part of the capital of such bank.

3919. (§ 582.) *Forfeiture of franchise.*—Every bank organized under the provisions of this title which refuses or neglects to comply with the requirements lawfully made upon it for the period of sixty days after demand, shall be deemed to have forfeited its franchise; and any failure on the part of such bank to comply with, or any violation of the provisions of this title, shall work a forfeiture of its franchise; and in either case the attorney general, or the county attorney of the county in which the bank is located, upon demand of the state auditor, shall commence an action for the purpose of annulling the existence of said corporation.

3920. (§ 583.) *Limit of liability.*—The total liability to any bank incorporated under the provisions of this title of any person or any company, corporation or firm, for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed fifteen per cent. of the aggregate amount of the capital stock of such corporation actually paid in and of the permanent surplus fund of such bank; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed.

3921. *Reserve.*—Each Bank organized under the provisions of this Title must at all times have on hand in available funds, an amount equal at least to twenty per centum of all its immediate liabilities; one half of this amount of available funds must consist of balances due the bank from solvent banks, one half of such sum shall be held in reserve as cash in hand. Immediate liabilities shall include all deposits due individuals, firms or corporations or to banks, and all items in the nature of claims payable on demand. In cash on hand shall be counted specie, legal tender notes, and all bills of solvent Banks. Whenever available funds of any Bank shall be below twenty per centum of its immediate liabilities such corporation shall not decrease its funds by making any new loans, discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required ratio between its immediate liabilities and its available funds has been restored. Whenever the available funds on hand of any bank shall not equal the amount above provided the State Examiner must notify such Bank to make good such reserve, and if such Bank shall fail to do so within thirty days after such notice, it shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [Act approved March 6, 1903.] (8th Sess. Chap. 107.)

3922. (§ 585.) *Taxation.*—Banks incorporated under the provisions of this title shall be taxed as national banks are, the stock to pay its share of the revenue, whether held in the state or not.

CHAPTER II.

TRUST DEPOSIT AND SECURITY CORPORATIONS.

Section 3923. *Number of corporations.*

“ 3924. *Capital stock. Shall begin business, when.*

“ 3925. *First meeting.*

“ 3926. *Directors.*

“ 3927. *Powers.*

- Section 3928. *What property may be held.*
“ 3929. *May call in remainder of stock.*
“ 3930. *Investment of capital.*
“ 3931. *Money or property payable or returnable on demand, unless time specified.*
“ 3932. *Insurance on mortgage property.*
“ 3933. *Transfer of stock.*
“ 3934. *Liability of stockholders.*
“ 3935. *Incorporation of trust and deposit companies.*
“ 3936. *Article of agreement.*
“ 3937. *Purposes for which corporation may be organized.*
“ 3938. *Directors.*
“ 3939. *Dividends.*
“ 3940. *Records and reports.*
“ 3941. *Stock of trustees, etc.*
“ 3942. *Existing corporations may reincorporate under this act.*
“ 3943. *Procedure on reincorporation.*
“ 3944. *Taxation of corporate property.*

3923. (§ 590.) *Number of corporators.*—Any number of persons not less than three may associate together to form a corporation for the purpose of carrying on a trust deposit, security and loaning business, and with powers herein conferred.

King v. Elling, 24 Mont. 472; 62 Pac. 784.

3924. (§ 591.) *Capital stock. Shall begin business, when.*—The amount of capital stock of any such corporation shall be fixed and limited by the corporators in their articles of incorporation, and shall not be less than one hundred thousand dollars nor more than five hundred thousand dollars, and shall be divided into shares of the par value of one hundred dollars each. When one hundred thousand dollars of stock shall have been subscribed for and the amount paid in cash, such corporations may proceed to business under this chapter. The capital stock of any corporation organized under this chapter may be increased by a vote of the stockholders at any meeting called for that purpose to any sum not exceeding five hundred thousand dollars. Any corporation organized under the provisions of this chapter may qualify and proceed to business within ninety days after filing articles of incorporation, and if it fails to do so, its articles of incorporation shall be null and void.

3925. (§ 592.) *First meeting.*—When any corporation is formed under this chapter any two of those associated may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published at the place where the principal office

for the transaction of business is to be located, at least five days before the time appointed for such meeting; but no notice is necessary if all the subscribers to the capital stock unite in a call for such meeting in writing.

3926. (§ 593.) *Directors.*—The affairs of such corporation must be managed by not less than three directors, to be elected by the stockholders, and to hold their offices for the term of one year, and until their successors shall be duly chosen; said directors must choose one of their number president, and a majority of them convened according to the by-laws constitutes a quorum for the transaction of business; said directors have power to fill any vacancy which may happen in their board for the current year, and they may elect or appoint such other officers as they may deem expedient.

3927. (§ 594.) *Powers.*—Any corporation organized under this chapter has power, in and by its corporate name, to receive money from any person or persons, corporation or company, on deposit, at such rate of interest and for such time as may be agreed upon, for the purpose of loaning and investing the same, and to accept and execute any trust which may be created by instruments in writing, appointing such corporation trustee for any lawful purpose, and to act as such trustee in all matters embraced in such trust; to take and receive from any individual or corporation on deposit for safe keeping and storage, gold and silver plate, jewelry, money, stocks, securities and other personal property, and may have power to collect coupons, interest and dividends on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms and for such compensation as may be agreed upon.

3928. (§ 595.) *What property may be held.*—It is lawful for any such corporation to lease, purchase, hold and convey, all such real or personal property as may be necessary to carry on its authorized business, as well as such real or personal property as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions; execute and issue in the transaction of its business all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be designated by the by-laws of such corporation.

3929. (§ 596.) *May call in remainder of stock.*—The directors of any such corporation may call in the remainder of the capital stock not paid in when the corporation is formed in such installments and at such times and places as they may deem proper, by giving notice thereof as the by-laws prescribe; and in case any stockholder neglects or refuses payment of any such installment for the space of sixty days after the same becomes due and payable, and after he has been notified thereof, the stock of such de-

linquent stockholder may be sold by the directors at public auction, at the office of the secretary of the corporation, giving at least thirty days' notice by publication in some newspaper published at the place where the principal office for the transaction of business of such corporation is located.

3930. (§ 597.) *Investment of capital.*—The board of directors of any such corporation are hereby authorized to invest the capital of said corporation, and keep the same invested, in good securities; and it is lawful for said corporation to make such investments of its capital, and the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds and mortgages on unincumbered real estate, within the state of Montana, and also on any and all stocks or bonds of this state, or any other state or territory of the United States, or the bonds of any county, city, town, or school district, of this state, legally authorized to issue such bonds.

3931. (§ 598.) *Money or property payable or returnable on demand, unless time specified.*—All money or property deposited with such corporation is payable or returnable to the depositor on demand, unless a particular time has been agreed upon for its payment or return, in which case the terms of the agreement regulate the payment or return.

3932. (§ 599.) *Insurance on mortgaged property.*—Whenever buildings are included in the valuation of any real estate upon which a loan is made by any such corporation, they must be insured by the mortgagor in such company or companies as the directors shall direct, and the policy of insurance shall be duly assigned or the loss made payable, as its interest may appear, to such corporation; and it is lawful for such corporation to renew such policy of insurance in the same, or in any other company or companies, as they may elect, from year to year, or for a longer or shorter term, in case the mortgagor neglects to do so, and may charge the amount paid to the mortgagor; and all the necessary charges and expenses paid by such corporation for such renewal or renewals must be paid by such mortgagor to such corporation, and it is a lien upon the property so mortgaged recoverable with interest from the time of payment as part of the moneys secured to be paid by such mortgage.

3933. (§ 600.) *Transfer of stock.*—The shares of the stock established under this chapter are personal property, and transferable on the books of the corporation in such manner as their by-laws prescribe.

3934. (§ 601.) *Liability of stockholders.*—The stockholders of every corporation formed under this chapter are individually liable for all debts contracted during the time of their being stockholders of such corporation, equally and ratably to the extent of

their respective shares of stock in any such corporation held by them at the time such debts were contracted.

3935. (§ 602.) *Incorporation of trust and deposit companies.*—Any three or more persons who shall have associated themselves by articles of agreement, in writing as provided by law, for one or more of the purposes included under § 3937 (604) of this article, may be incorporated under any name or title designating such business. [*Act approved March 8, 1893.*]

3936. (§ 603.) *Articles of agreement.*—The articles of agreement shall set out:

1. The corporate name of the proposed corporation which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, or an imitation of such name.

2. The name of the city or town and county in which the principal office of the corporation is to be located.

3. The amount of the capital stock of the corporation authorized by the articles of agreement, the number of shares into which it is divided, the amount of capital stock actually subscribed in good faith at the time of the filing of such article; and said articles shall further state that one-half of the capital stock so subscribed has been actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors or managers; *Provided, however,* that no company organized under this act shall begin to do business until one hundred thousand dollars in cash has been actually paid in as aforesaid.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors or managers, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case shall exceed fifty years.

7. The purposes for which the association or company is formed.

The articles of agreement shall be signed and acknowledged by the parties thereto, and shall be filed in the office of the secretary of state, and a duplicate thereof recorded in the office of the recorder of deeds of the county in which the corporation has its principal place of business. The secretary of state shall thereupon give a certificate setting forth that such corporation has been duly organized, and the amount of its authorized and subscribed capital; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such corporation. The persons so acknowledging such article of association, and their associates and successors shall, for the period not to exceed fifty years next succeeding the issuing of such certificates by the secretary of state be a body corporate; and by such name they and

their successors shall be entitled to have, possess and enjoy all the rights and privileges, conferred by law upon corporations, subject to the provisions of this article. [*Act approved March 8, 1893.*]

3937. *Purposes for which corporation may be organized.*—Corporations may be created under this article for any one or more of the following purposes:

First: To receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest thereon as may be agreed upon.

Second: To accept and execute all such trusts and perform such duties of every description, as may be committed to them by any person or persons whatsoever, or by any corporations, or may be committed or transferred to them by order of any of the courts of record of this State or any other State, or of the United States.

Third: To take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate or trust created in accordance with the laws of this State, or any other State, or of the United States, and execute such legal trusts in regard to the same, on such terms as may be declared, established or agreed upon in regard thereto, or to execute or guarantee any bond or bonds required by law to be given in any proceedings in law or equity in any of the courts of this state or any other state, or of the United States.

Fourth: To act as agent for the investment of money for other persons or corporations, and as agents for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidence of debt of any corporation, association, municipality, state or public authority as may be agreed upon.

Fifth: To accept from and execute trusts for married women in respect to their separate property, whether real or personal, and act as agents for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

Sixth: To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation or person to appoint a trustee, assignee or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person and as guardian of the person and estate of any minor or minors or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other persons disqualified or unable to manage their estate

Seventh: To guarantee the fidelity and diligent performance of the duty of persons holding public or private trust and to certify and guarantee title to real estate.

Eighth: To loan money upon real estate, collateral, or personal security, and execute and issue its notes, debentures, payable at a future date; and to pledge its mortgages upon real estate and other securities as security therefor.

Ninth: To buy and sell government, state, county, municipal and other bonds, and all kinds of negotiable, non-negotiable and commercial paper, stocks and other investment securities.

Tenth: To become endorser and surety and to secure indorsers and sureties for a compensation upon such terms and conditions as shall be agreed upon by the trustees of such corporation.

Eleventh: To accept, receive, and hold money on deposit, payable either on time or on demand, with or without interest, as may be agreed upon with the depositors, and to take and receive from any individual or corporation on deposit for safe keeping and storage, gold and silver plate, jewelry, stocks and securities and other valuable and personal property, and to collect coupons, interest and dividends on said above described securities, and to rent out the use of safes and other receptacles on their premises upon such terms, and for such compensation as may be agreed upon. [*Act approved March 15th, 1901.*] (7th Sess. 148-9.)

3938. (§ 605.) *Directors.*—The amount of capital stock actually subscribed of any corporation, organized under this article shall not be less than one hundred thousand dollars, and the amount of the capital stock authorized by such articles shall not be more than ten million of dollars. The property and business of the corporation shall be controlled and managed by directors, not less than three or more than twenty-five in number, who shall respectively be stockholders of such corporation, and a majority of whom shall be bona fide citizens of this state to be elected by ballot as provided by law by the shareholders of such corporation for one year, if the number of directors of such corporation does not exceed five, at such time and place as shall be directed by the laws of such corporation, of which time and place at least two weeks' notice shall be published in some newspaper at least once a week in the city or county in which the corporation is located, and if there be no newspaper published in such county, then in any newspaper published in the state, which circulates in the locality where such corporation is located. Such election shall be made by such of the shareholders as shall attend in person, or by proxy in writing. In case the election shall not be made on the day named, the said corporation shall not thereby be dissolved, but an election day may be had at any other time, agreeable to the by-laws of said corporation; and the persons so elected shall hold their office until others are elected and qualified. If the number of directors of such corporation named in the articles of association shall exceed five in number, they shall, as soon as may be

after the organization, divide themselves by ballot into three classes of equal number as near as may be, designated the first, second and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years, and at each annual election conducted in the manner hereinbefore designated, directors shall be elected for the term of three years to fill the vacancies created by the retiring class. In case of death or resignation of one or more of said directors, the survivors shall fill the vacancy until the next election. [*Act approved March 8, 1893.*]

3939. (§ 606.) *Dividends.*—Such a corporation shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts and liabilities due them. Dividends of the profits of the corporation may be declared by the trustees or directors thereof every six months, or oftener, as the directors may elect; but no such dividends shall be made and paid to stockholders while such corporation is in an insolvent condition, nor shall any dividends be declared which would render such corporation insolvent; if the directors of such corporation shall knowingly declare and pay any dividends when the corporation is insolvent, or any dividends the payment of which would render it insolvent, they shall be jointly and severally liable for all debts of the corporation then existing and for all that shall thereafter be contracted while they shall respectively continue in office. [*Act approved March 8, 1893.*]

3940. (§ 607.) *Records and reports.*—The trustees of the corporation shall keep correct account of their transactions, and have full statements of the condition of affairs of such corporation made out and exhibited to the stockholders as often as once in each year, at least ten days before the day of election. The books and all records of the proceedings of such corporation shall at all times during their hours of business be open for inspection and examination to all stockholders, and to the auditor of this state, or to such person or persons as the legislative assembly of said state or the state auditor shall designate or appoint as agent for this purpose. Every association shall make a report of its condition to the state auditor on the first Monday of each January, April, July, and October, and at such other times as said auditor may call for it, under the oath of its president or treasurer, attested by a majority of the directors, showing in detail its liabilities and assets, and specifying its investments under heads of loans on mortgages, loans on collateral security, loans on personal security, bonds and stocks, deposits in bank and cash on hand. An officer or clerk of such association who shall wilfully make a false oath or affidavit relative to the financial condition of such association shall be deemed guilty of perjury, and upon conviction thereof, shall be punished accordingly. [*Act approved March 8, 1893.*]

3941. (§ 608.) *Stock of trustees, etc.*—No person holding stock in the corporation as executor, administrator, guardian or trustee, and no person holding such stock or collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly. And the estate and funds in the hands of such executors, administrators, guardians or trustees, shall be liable in like manner and to the same extent as testator or intestate, or the ward of the person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. Every such executor, administrator, guardian or trustee, shall represent the shares of the stock in his hands at all meetings of the corporation, and may vote accordingly as a shareholder; and every person who shall pledge his stock as aforesaid, may nevertheless represent the same at all meetings, and may vote accordingly as a shareholder. [Act approved March 8, 1893.]

3942. (§ 609.) *Existing corporations may reincorporate under this act.*—The rights of any corporation heretofore organized under the act hereby amended shall not be affected by this act; but any such company may, at any regular meeting of its stockholders, by a resolution passed by a majority thereof, avail itself of the benefits of this act, and any such company, whether heretofore or hereafter organized for any of the purposes mentioned herein, may increase or diminish its capital stock by complying with the provisions of this law, and may also extend its business to any other purpose authorized by this act, subject to the provisions and liabilities thereof. [Act approved March 8, 1893.]

3943. (§ 610.) *Procedure on reincorporation.*—Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of availing itself of the provisions and privileges of this article, or for increasing or diminishing its capital stock, or for extending or changing its business, it shall be the duty of the directors to publish a notice signed by at least a majority of them, in a newspaper in the county at least twenty days, and to deposit a written or printed copy in the postoffice, postage prepaid, addressed to each stockholder at his usual place of residence, at least twenty days previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the amount to which it shall be extended or changed. An affirmative vote of the persons holding two-thirds in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock or to extend or change its business as aforesaid, or to enable the corporation to avail itself of the provisions of this

article. If at any time and place specified in the notice provided for in the preceding section, stockholders shall appear in person or by proxy in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the directors chairman of the meeting and a suitable person for secretary, and proceed to a vote of those present in person or by proxy; and if on canvassing the vote, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital stock or of extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this article, a statement of the proceedings showing a compliance with the provisions of this article—the amount of capital stock actually paid in, the business to which it is extended or changed, the whole amount of assets and liabilities of the corporation and the amount to which the capital stock shall be increased or diminished—shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such statement shall be acknowledged by the chairman and recorded as provided in § 3936 (603), and a certified copy of such recorded instrument shall be filed in the office of the secretary of state, who shall thereupon issue a certificate that such corporation has complied with the law made and provided for the increase or decrease of capital stock as the case may be, and the amount to which such stock is increased or decreased; and such a certificate shall be taken in all courts of the state as evidence of such increase or decrease of stock; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in said certificate, and the business extended or changed as aforesaid, and the corporation shall be entitled to the privileges and provisions and be subject to the liabilities of this article. [*Act approved March 8, 1893.*]

3944. (§ 611.) *Taxation of corporate property.*—The property of the corporation organized under this act shall be assessed for taxes in the same manner as the property of national banks and no other. All acts and parts of acts in conflict with this act be and the same are hereby repealed. [*Act approved March 8, 1893.*]

Daly Bank v. Board, 33 Mont. 104; 81 Pac. 951. This section exempts from taxation the personal property of banks, organized under the laws of the state and is unconstitutional.

CHAPTER III.

SAVINGS BANKS.

Section 3945. Incorporation.

“ 3946. *Capital stock.*

“ 3947. *Directors and officers, election and qualification of.*

- Section 3948. *Majority of directors required to do business.*
“ 3949. *Business.*
“ 3950. *Deposits.*
“ 3951. *Investment of capital stock.*
“ 3952. *Officers not to borrow.*
“ 3953. *Liability of officers and stockholders.*
“ 3954. *Real estate, what may be held.*
“ 3955. *Inspection of books, report.*
“ 3956. *Contingent fund.*
“ 3957. *Married women and minors, rights of.*
“ 3958. *May deposit cash with other banks.*

3945. (§ 620.) *Incorporation.*—Any number of persons, not less than three, may associate themselves together under the provisions of this chapter, and become incorporated as a savings bank, who shall, with their successors, constitute a body politic and corporate, under the name adopted by them in their articles of incorporation, provided no such corporation shall adopt a name previously adopted by any other corporation in this state.

3946. (§ 621.) *Capital stock.*—No corporation must be organized as a savings bank under the provisions of this chapter with a capital stock of less than one hundred thousand dollars fully paid, in cash, prior to the reception of deposits by such bank; but such corporation may organize on a basis not exceeding five hundred thousand dollars capital stock, of which at least one hundred thousand dollars must be paid in before deposits are received, and the balance upon the call of the directors of such corporation within five years from the date of filing articles of incorporation, but not more than twenty-five per cent. of such unpaid capital must be called in during any one year, and all calls to be made upon thirty days' notice. Such capital must be held by the bank as a guarantee to its depositors to make good any loss or depreciation of the funds of the corporation, and must be invested as hereinafter provided for the investment of the funds of such corporation. Each stockholder must receive a certificate of the portion of the capital stock owned by him, which must be transferable on the books of the corporation, and entitles the holder to participate in the profits of the corporation after the depositors have been paid such rates of interest as may be provided by the by-laws of the corporation, to such extent and in such manner as may be prescribed in the by-laws, and, at the dissolution of said corporation, to receive the proportionate amount of the profits which remains after the payment of the depositors.

3947. (§ 622.) *Directors and officers, election and qualification of.*—The stockholders must elect from their number not to exceed thirteen directors, who may choose from their number a president and vice president and appoint a cashier and teller and such other officers and agents as their business may require, and

remove such officers at their pleasure and appoint others. The first directors hold their office until the first Monday in January next after their election or appointment, and until their successors are elected and qualified, and all subsequent elections must be held on the first Monday of January of each year. The directors are authorized to adopt such by-laws not in conflict with this title as may be necessary. The directors must be citizens of the United States, and at least three-fourths of them must be residents of the state. Every director must own in his own right at least ten shares of the capital stock of the bank, and any director who ceases to be the owner of at least ten shares, or who becomes in any other manner disqualified, shall thereupon cease to be a director, and his place must be filled until the next election by the directors. Each director, when elected or appointed, must take an oath that he will, so far as the duties devolve upon him, diligently and honestly administer the affairs of such bank, and will not knowingly violate, or willingly permit to be violated, any of the provisions of this chapter.

3948. (§ 623.) *Majority of directors required to do business.*—The affirmative vote of at least a majority of the members of the board of directors is required in making any order for or authorizing any investment of any money or the sale or transfer of any stock or securities, or other real or personal property belonging to the corporation, or the appointment of any officer receiving any salary therefrom.

3949. (§ 624.) *Business.*—The business of such corporation is to receive on deposit such sums of money as may from time to time be offered therefor, for safe keeping or investment, in accordance with the terms of this chapter. Said corporation must receive on deposit all sums of money which may be offered for the purpose aforesaid, but every such corporation has the right to limit the aggregate amount which any one person or society may deposit to such sum as it may deem expedient to receive, and may refuse to receive any deposit, and at any time may return all or any part of any deposit.

3950. (§ 625.) *Deposits.*—All deposits must be received by said corporation and returned to the depositors under such regulations as the board of directors from time to time prescribe, which regulations must be posted in some conspicuous place in a room where such corporation transacts its business and printed in all pass books delivered to its depositors.

3951. (§ 626.) *Investment of capital stock.*—At least one-half of the capital paid in and one-half of the whole amount deposited, must be invested in bonds or other securities of the United States or any of the states or territories, of any county, city, town or school district of this state, on which interest is regularly paid; or loaned on unincumbered real estate, worth at

least double the amount to be secured. The remainder may be invested in said bonds or loaned on the aforesaid securities or on approved personal security; but no loan must be made on personal security of less than two responsible persons or collateral security to be approved by the directors, but no loan upon personal security shall be made to any one person or copartnership, to an amount exceeding ten thousand dollars.

3952. (§ 627.) *Officers not to borrow.*—No president, vice president, director, or other officer or servant of such corporation, shall directly or indirectly borrow any of the funds of such corporation or of its deposits, or in any manner use the same in their private affairs or business, nor shall any director receive any pay, salary or emolument, until after such interest as the directors shall have determined to allow depositors shall be provided for in accordance with the regulations of the corporation.

3953. (§ 628.) *Liability of officers and stockholders.*—The officers and stockholders of every banking corporation formed under the provisions of this chapter are individually liable for all debts contracted during the term of their being officers or stockholders of such corporation equally and ratably to the extent of their respective shares of stock in any such corporation, except that when any stockholder sells and transfers stock such liability ceases at the expiration of six months from and after the date of such sale and transfer.

3954. (§ 629.) *Real estate, what may be held.*—The real estate which such corporation may lawfully purchase, hold and convey, is:

1. Such as may be necessary for the proper transaction of its business, not exceeding in value one hundred and fifty thousand dollars.

2. Such as is mortgaged to it in good faith for moneys loaned in pursuance of the provisions of this chapter, or given as security for money loaned or advanced.

3. Such as is purchased at sale on judgment or decree obtained or rendered for money so loaned or advanced. And the said corporation must not purchase, hold or convey real estate in any other case or for any other purpose. And said corporation shall not buy or sell any personal property, except such as may be necessary for the proper transaction of its business, or such as may have been pledged, mortgaged or assigned to it, to secure moneys loaned or advanced.

3955. (§ 630.) *Inspection of books, report.*—The books of said corporation must at all times during its hours of business, be open for inspection and examination to the state auditor, or such other person or persons as the legislative assembly or the state auditor designates or appoints as agents for this purpose.

Every corporation must make a report of its condition to the state auditor on the first Mondays of January, April, July and October, and at such other times as said auditor may call for it, under the oath of its president or treasurer, attested by a majority of the directors, showing in detail its liabilities and assets, and specifying its investments under heads of loans on mortgages, loans on collateral security, loans on personal security, bonds and stocks, deposits in bank and cash on hand. Any officer or clerk of such corporation who wilfully makes a false oath or affidavit relative to the financial condition of such corporation, is guilty of perjury, and upon conviction thereof must be punished accordingly.

3956. (§ 631.) *Contingent fund.*—Each corporation organized under the provisions of this chapter must set aside annually at least five per cent. of its net profits as a contingent fund to meet extraordinary expenses or losses until such surplus amounts to twenty per cent. of the capital stock of such corporation.

3957. (§ 632.) *Married women and minors, rights of.*—Married women and minors may, in their own right, make and draw deposits and draw dividends, and give valid receipts therefor.

3958. (§ 633.) *May deposit cash with other banks.*—Any corporation organized under the provisions of this chapter has power to deposit any cash on hand in any bank, or with any loan and trust company, within the state, which the board of directors may determine to be solvent, upon such terms as may to such directors be satisfactory, but no greater sum than fifty thousand dollars shall be at any one time deposited in any one bank or corporation.

CHAPTER IV.

ENDOWMENT AND INVESTMENT COMPANIES.

- Section 3959. Who may form corporation.*
“ 3960. *Capital stock. When authorized to commence business.*
“ 3961. *Liability of stockholders.*
“ 3962. *Name of title.*
“ 3963. *What articles of incorporation shall contain.*
“ 3964. *First meeting.*
“ 3965. *Board of Directors.*
“ 3966. *Powers of corporation.*
“ 3967. *Purposes of corporation.*
“ 3968. *Deposits payable on demand.*
“ 3969. *Directors to keep books of account. Reports.*
“ 3970. *Annual statements.*

Section 3971. Change of name.

" 3972. *Branch offices.*

" 3973. *Corporate seal.*

" 3974. *Annual meeting.*

" 3975. *Reserve fund.*

3959. *Who may form corporation.*—Any person or persons, not less than five, may associate themselves together to form a corporation for the purpose of carrying on an endowment and investment business, with the powers herein conferred. [Act approved March 7, 1905, § 1.] (9th Sess. Chap. 100.)

3960. *Capital stock. When authorized to commence business.*—The amount of capital stock of such corporation shall be fixed and limited by the incorporators in their articles of incorporation, and shall be not less than \$100,000 and shall be divided into shares of the par value of not less than \$25 nor more than \$100 each. When not less than \$50,000 of the capital stock of any corporation authorized by this Act shall have been subscribed, and paid in in cash, such corporation may proceed to do business under this Act. The capital stock of any corporation organized under this Act may be increased by a vote of the majority of the stockholders, to an amount not to exceed \$5,000,000, and a certificate of such increase of stock shall be filed with the Secretary of State of Montana and become a part of the original articles of incorporation filed in said office. Any corporation organized under the provisions of this Act may qualify and proceed to do business within ninety days after filing articles of incorporation, and if it fails to do so its articles of incorporation shall be null and void. [Act approved March 7, 1905, § 2.] (9th Sess. Chap. 100.)

3961. *Liability of stockholders.*—The stockholders of every corporation authorized by this Act are individually liable for all debts contracted during the time of their being stockholders of such corporation, equally and ratably, to the extent of their respective shares of stock only, in any such corporation held by them at the time such debts were contracted. [Act approved March 7, 1905, § 3.] (9th Sess. Chap. 100.)

3962. *Name or title.*—Any five or more persons who shall have associated themselves by articles of incorporation, in writing as provided by law, for the purposes included under the provisions of this Act, may be incorporated under any name or title designating such business. [Act approved March 7, 1905, § 4.] (9th Sess. Chap. 100.)

3963. *What articles of incorporation shall contain.*—The articles of incorporation shall set out:

First: The corporate name of the proposed corporation, which

shall not be the name of any corporation heretofore incorporated under the laws of this state for similar purposes, or imitation of such name.

Second: The name of the city or town in which the principal office is to be located.

Third: The amount of the capital stock of the corporation authorized by the articles of incorporation, the number of shares into which it is divided, and the par value of each share, the amount of the capital stock actually subscribed in good faith at the time of the filing of such articles, and said articles shall further state the actual amount of the capital stock paid up in cash, and in the custody of the persons named as the first board of directors or managers; *provided, however*, that no corporation organized under this Act shall begin to do business until not less than \$50,000 has been actually paid in in cash as aforesaid.

Fourth: The names and places of residence of the several shareholders and the number of shares subscribed by each.

Fifth: The number of the board of directors or managers, and the names of those agreed upon for terms hereinafter designated.

Sixth: The number of years the corporation is to continue, which shall in no case exceed fifty years.

Seventh: The purposes for which the corporation is formed.

The articles of incorporation shall be signed and acknowledged by the parties thereto, and shall be filed in the office of the Secretary of State, and the duplicate thereof recorded in the office of the County Clerk and Recorder of the county in which the corporation has its principal place of business. The Secretary of State shall thereupon give a certificate, which shall be attached to a certified copy of the articles of incorporation of said company, setting forth that such corporation has been duly organized, and the amount of its authorized and subscribed capital; and such certificate shall be taken by all courts of this state as evidence of the corporate existence of such corporation. The persons so acknowledging such articles of incorporation, and their associates and successors shall, for the term set forth in said articles of incorporation, be a body corporate; and by such name they and their successors shall be entitled to have, possess, and enjoy all the rights and privileges conferred by law upon corporations, subject to the provisions of this Act. [*Act approved March 7, 1905, § 5.*] (*9th Sess. Chap. 100.*)

3964. *First meeting.*—When any corporation is formed under this Act, any three of those associated may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published at the place where the principal office for the

transaction of business is to be located, at least five days before the time appointed for such meeting; but no notice is necessary if all the subscribers to the capital stock unite in a call for such meeting, in writing. [*Act approved March 7, 1905, § 6.*] (*9th Sess. Chap. 100.*)

3965. *Board of directors.*—The affairs of such corporation must be managed by not less than five directors, to be elected by the stockholders, and to hold their office for the terms as follows: If the number of directors of such corporation named in the articles of incorporation shall be five or more in number, they shall, as soon as may be after the organization, divide themselves by ballot into three classes, of equal number as may be, designated the first, second and third class, of which the first shall remain in office one year, the second class two years, and the third class three years, and at such annual election, conducted in the manner hereinafter designated, directors shall be elected for the term of three years to fill the vacancies created by the retiring class. Said directors must choose one of their number president, and a majority of them convened according to the by-laws constitutes a quorum for the transaction of business. Said directors to have power to fill any vacancy which may occur in their board, for the unexpired term of such vacancy, and they may elect or appoint such other officers as they may deem expedient. Said directors to have power to increase the number of directors from time to time, in accordance with the provisions of the by-laws of such corporation. [*Act approved March 7, 1905, § 7.*] (*9th Sess. Chap. 100.*)

3966. *Powers of corporation.*—Any corporation organized under the provisions of this Act is vested with the following powers, to-wit:

First: It shall be lawful for any such corporation to lease, purchase, hold and convey, all such real or personal property as may be necessary to carry on its authorized business, as well as such real or personal property as it may deem necessary to acquire in the enforcement or settlement of any claims or demands arising out of its business transactions; execute and issue in the transaction of its business all necessary receipts, certificates and contracts, which shall be signed by such person or persons as may be authorized and designated by the board of directors of such corporation.

Second: The directors of any such corporation may call in the remainder, or the unpaid balance of the capital stock not paid in when the corporation is formed, in such installments and at such times and places as they may deem proper, by giving notice thereof as the by-laws prescribe; and in the event of any stockholder neglecting or refusing payment of any such installment within the time prescribed in such call for payment of stock,

which call, however, shall not be less than ninety days, the stock of such delinquent stockholder may be forfeited to the company and may be resold by the directors in such manner as the by-laws prescribe. And *further provided* that no stock which shall have been paid by any subscriber shall be forfeited, but only the amount of the unpaid stock subscribed by such subscribers.

Third: The board of directors of any such corporation are hereby authorized to invest the capital and assets of said corporation and keep the same invested in good securities; and it is lawful for said corporation to make such investments of its capital and assets and of the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds, loans upon collateral, and mortgages on unincumbered real estate, and also in any and all stocks or bonds of any county, city, town or school district of this State, legally authorized to issue such bonds, or bonds of the United States or of any State of the United States.

Whenever buildings are included in the valuation of any real estate upon which a loan is made by any corporation authorized by this act, they must be insured by the mortgagor in such Company or companies as the directors may require, and the policy of insurance shall be duly assigned, or the loss made payable, "as interest may appear," to such Corporation; and it shall be lawful for said corporation to renew such policy of insurance in the same, or in any other company or companies, as it may elect, from year to year, or for a longer or shorter term, in case the mortgagor neglects to do so, and may charge the amount paid to the mortgagor; and all the necessary charges and expenses paid by such corporation, for such renewal or renewals must be paid by such mortgagor to such corporation, and it is a lien upon the property so mortgaged, recoverable with interest from the time of payment as part of the moneys secured to be paid by such mortgage. [*Act approved March 7, 1905, § 8.*] (*9th Sess Chap. 100.*)

3937. *Purposes of corporation.*—Corporations may be created under this act for any one or more of the following purposes: First: To receive moneys in trust and to accumulate the same at such rates of interest as may be obtained or agreed upon, or to allow such interest as may be agreed upon, and to issue and sell its contracts or certificates of indebtedness, bearing fixed rates of interest, in whole or in part, with participation or non-participation in the profits of the corporation, and maturing at fixed periods of time or otherwise, as may be fully set forth in said contracts or certificates.

Second: To buy and sell government, State, County, municipal and other bonds, and all kinds of negotiable and non-negotiable and commercial paper, stocks and other investment securities.

Third: To accept, receive and hold money on deposit, payable either on time or demand, with or without interest as may be agreed upon with depositors, and to collect coupons, interest and dividends on said above described securities. [*Act approved March 7, 1905, § 9.* (9th Sess. Chap. 100.)]

3968. *Deposits payable on demand.*—All money or property deposited with such corporation is payable and returnable to the depositor on demand, unless a particular time has been agreed upon for its payment or return, in which case the terms of the agreement, certificate or contract regulate the payment or return. [*Act approved March 7, 1905, § 10.*] (9th Sess. Chap. 100.)

3969. *Directors to keep books of account. Reports.*—The directors of such corporation shall keep correct account of their transactions, and have full statements of the condition of affairs of such corporation made out and exhibited to the stockholders as often as once a year, at least ten days before the day of annual election. The books and all records of the proceedings of such corporation shall at all times during their hours of business be open for the inspection and examination by all stockholders and to the Examiner of this State, or to such person or persons as the legislative assembly of said State or the State Examiner, shall designate as agent for such purpose. Every such corporation shall make a report of its condition at the close of its business December 31st, annually to the State Examiner, and at such other times as said Examiner may call for it, under oath of its president or treasurer, attested by a majority of the directors, showing in detail its liabilities and assets, and specifying its investments under the head of loans on mortgages, loans on collateral security, loans on personal security, bonds and stocks, deposits in bank and cash on hand. An officer or clerk of such corporation who shall wilfully make a false oath or affidavit relative to the financial condition of such association shall be deemed guilty of perjury, and upon conviction thereof, shall be punished accordingly. [*Act approved March 7, 1905, § 11.*] (9th Sess. Chap. 100.)

3970. *Annual statement.*—The annual statement referred to in § 3969 (11) of this Act shall be filed with the Auditor of State on or before the first day of March in each succeeding year, and the failure to make and file such statement shall cause the directors of such corporation to be personally liable for all of the indebtedness of such corporation, and which liability shall continue until such time as the statement shall be prepared and filed as required in such § 3969 (11). [*Act approved March 7, 1907, § 12.*] (9th Sess. Chap. 100.)

3971. *Change of name.*—The stockholders and board of directors of such corporation may change the corporate name thereof, *provided* such change has been duly approved by a

majority of the stockholders of the corporation, and in such event a certificate setting forth such change of name shall be filed in the office of the Secretary of State and in the office of the County Clerk and Recorder of the County where such corporation has its principal office, and such certificate shall be attested by the president and secretary of the corporation, with the seal of the corporation affixed, and a majority of the board of directors, and such change of name shall not in any manner be construed to effect or change any of the liabilities or other conditions of the corporation existing under such original name of such corporation. [Act approved March 7, 1905, § 13.] (9th Sess. Chap. 100.)

3972. *Branch offices.*—The Board of Directors of such Corporation shall have power to establish branch offices or agencies of such corporation at any place within the boundaries of the United States or foreign countries. [Act approved March 7, 1905, § 14.] (9th Sess. Chap. 100.)

3973. *Corporate seal.*—Every corporation authorized by the provisions of this Act shall adopt and have a corporate seal, which shall bear the name of the corporation and such other matter as the directors may authorize, so as to identify such seal with the corporation to which it belongs. [Act approved March 7, 1905, § 15.] (9th Sess. Chap. 100.)

3974. *Annual meeting.*—The annual meeting and other meetings of the stockholders of such corporations, shall be held at such time and place as shall be designated and set forth in the by-laws of the corporation. [Act approved March 7, 1905, § 16.] (9th Sess. Chap. 100.)

3975. *Reserve fund.*—All corporations organized under this Act shall maintain a proper and sufficient reserve, which shall be cumulative from time to time to enable such corporation to pay at maturity any and all investment and endowment contracts as the same shall mature, in accordance with the terms thereof. [Act approved March 7, 1905, § 17.] (9th Sess. Chap. 100.)

CHAPTER V.

FOREIGN BANKING CORPORATIONS.

Section 3976. *Right to transact business.*

“ 3977. *Branch bank, how established.*

“ 3978. *Certificate of state auditor.*

“ 3979. *Reserve fund.*

“ 3980. *Reports to state examiner.*

“ 3981. *Semi-annual report.*

“ 3982. *Officers prohibited from certifying checks without deposits.*

“ 3983. *Failure to make statements.*

Section 3984. Limitation on liabilities.

- “ 3985. *Capital surplus or deposits must not be withdrawn from state.*
- “ 3986. *Duties of state examiner.*
- “ 3987. *Certificate may be cancelled for impaired capital.*
- “ 3988. *Mistatement of amount of capital prohibited.*
- “ 3989. *Assets of bank not liable for redemption of circulating notes or bills.*
- “ 3990. *Penalties for false statements, entries or reports.*
- “ 3991. *Penalties for violation of this Act.*

3976. *Right to transact business.*—No foreign corporation or joint stock company shall keep any office for the purpose of receiving deposits or discounting notes or bills, or buying and selling exchange, coin, or bullion, or shall do any banking business whatever, within this state, except as hereinafter provided. Every corporation or joint stock company not now or hereafter created, organized and existing under the laws of Montana, shall be deemed a foreign corporation or joint stock company; *provided, always*, that this Act shall not apply to any National Banking Association organized under authority of the Congress of the United States. [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 137.)

3977. *Branch bank; how established.*—Any foreign corporation or joint stock company may establish and maintain a branch bank in any city, town or village in this state, upon complying with the following requirement, and obtaining a certificate from the state auditor, as hereinafter provided; that is to say, such foreign corporation or joint stock company shall set aside and pay into the treasury of such branch bank a sum of money at least equal to the amount of capital stock required for a National Bank, at the place where such branch bank may be located, which payment shall be certified under oath to the state auditor by the local manager of such branch bank. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 137.)

3978. *Certificate to State Auditor.*—The state auditor shall, upon compliance with the foregoing requirements, issue a certificate to such branch bank, stating that it has complied with the provisions of this Act and is entitled to do a banking business at the place designated in such certificate. A new certificate shall be issued by the state auditor, on the 1st day of January in each year; *provided*, that the capital herein required shall be unimpaired, and the other provisions of this Act have been complied with. [Act approved March 7, 1907, § 3.] (10th Sess. Chap. 137.)

3979. *Reserve fund.*—Every such branch bank of any foreign corporation or joint stock company doing a banking business in this state, shall at all times, have on hand in such branch bank, in lawful money of the United States, an amount equal to at least ten per centum (10%) of the aggregate amount of its deposits of all kinds. Whenever the said reserve fund shall be below twenty per centum (20%) of such deposits, such branch bank shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividend of its profits until the required proportion between the aggregate amount of its said deposits and its lawful money of the United States has been restored. The state examiner may notify such branch bank, whose lawful money reserve shall fall below the amount required to be kept on hand, to make good such reserve, and if such bank shall fail for thirty days thereafter so to make good its reserve of lawful money, the state auditor shall thereupon cancel the certificate theretofore issued by him to such branch bank. [*Act approved March 7, 1907, § 4.*] (10th Sess. Chap. 137.)

3980. *Reports to state examiner.*—Every such branch bank of any foreign corporation or joint stock company shall make, to the state examiner, not less than five reports during each year, all at his call, not less than two calendar months to intervene between each call, according to the form which may be prescribed by him, verified by the oath or affirmation of the resident manager or cashier of such branch bank, which said statement must contain a full abstract of the general accounts of the bank, and exhibit in detail under appropriate heads, the resources and liabilities thereof, so as to plainly show all of the resources and liabilities, and the amount and kind thereof; which said statement shall be transmitted to the state examiner within five days after the receipt of the request or requisition therefor made by him, and in such condensed form as may be required by the state examiner. It must be published once in a newspaper of general circulation in the place where such bank is located, or, if there be no newspaper of general circulation published in such place, then in one published nearest thereto within the county and at the expense of the bank, and such proof of the publication of such statement shall be furnished as may be required by the state examiner. The state examiner shall also have power to call for special reports from any branch bank, whenever, in his judgment, the same are necessary in order to have a full and complete knowledge of its conditions. [*Act approved March 7, 1907, § 5.*] (10th Sess. Chap. 137.)

3981. *Semi-annual report.*—In addition to the reports required by the preceding section, every such branch bank of any foreign corporation or joint stock company shall report to the

state examiner, within ten days after declaring any dividend, the amount of such dividend and the amount of net earning in excess of such dividend. It shall also make a semi-annual report on the 30th day of June and the 31st day of December of each year in such form as shall be prescribed by the state examiner, showing the amount of the earnings of such branch bank and the amount of the dividends, if any, for the preceding six months. Such report shall be attested by the oath of the resident manager or cashier of such bank. [*Act approved March 7, 1907, § 6.*] (*10th Sess. Chap. 137.*)

3982. *Officers prohibited from certifying checks without deposits.*—It shall be unlawful for any officer, clerk or agent of any branch bank to certify any check drawn upon the same, unless the person or company drawing the check has on deposit with such branch bank, at the time such check is certified, an amount of money equal to the amount certified in such check. If any such officer, clerk or agent shall resort to any device or receive any fictitious obligation, direct or collateral, in order to evade the provisions hereof, or if he shall certify checks before the amount thereof shall have been regularly entered to the credit of the dealer upon the books of such branch bank, every such act shall be deemed a violation of this Section, and be subject to the penalty hereinafter prescribed. Any check so certified by duly authorized officers shall, however, be a good and valid obligation against such bank. [*Act approved March 7, 1907, § 7.*] (*10th Sess. Chap. 137.*)

3983. *Failure to make statements.*—If any such bank neglects to make out or transmit the statements and proof of publication thereof, required by this Act, it shall be subject to a penalty of twenty dollars for each day in default after the periods respectively required by this Act that it may delay to make and transmit such statement. And, should any such bank delay for the period of one month beyond the period when the same is required to be made to make out and transmit the statements required to be made by this Act, or wilfully violate any provisions of this Act, then it shall be the duty of the state auditor to cancel any outstanding certificates issued by him. [*Act approved March 7, 1907, § 8.*] (*10th Sess. Chap. 137.*)

3984. *Limitation on liabilities.*—The total liabilities to any such branch bank of any person or of any company, corporation or firm for money borrowed, including, in the liabilities of a company or firm, the liabilities of the several members thereof, shall at no time exceed one-tenth of the amount of the capital actually paid in and in use in such branch bank. But the discount of bills of exchange drawn in good faith against existing values, and the discount of business or commercial paper actually owned by

the person negotiating the same, shall not be considered as money borrowed. [*Act approved March 7, 1907, § 9.*] (*10th Sess. Chap. 137.*)

3985. *Capital, surplus or deposits must not be withdrawn from state.*—Neither any portion of the capital required by this act, nor of the surplus or deposits of such branch bank, shall be withdrawn therefrom by said foreign corporation or joint stock company and kept or used in any other branch bank or such corporation or joint stock company, except so far as shall be necessary and proper in the ordinary course of the banking business of the local branch bank. [*Act approved March 7, 1907, § 10.*] (*10th Sess. Chap. 137.*)

3986. *Duties of state examiner.*—The state examiner, as often as he shall deem it proper and necessary, and at least once in each year, shall, in person or by suitable assistant or assistants, make an examination of the affairs of such branch bank, and shall have power to make a thorough investigation into all the affairs of such branch bank, and, in doing so, examine any of the officers, agents or employees thereof on oath, and shall make a full and detailed report of the condition of such branch bank to be kept in the files of his office. And for the purpose of contributing to the expense and maintenance of the state examiner's office, every such branch bank shall pay into the state treasury, for the "State Examiner's Fund," on or before the first day of November of each year, a fee according to the capitalization of such branch bank, at the following rate: For a capital stock of from twenty-five to fifty thousand dollars, inclusive, a fee of fifty (\$50.00) dollars; for a capital stock of over fifty thousand dollars and up to seventy-five thousand dollars, inclusive, a fee of seventy-five (\$75.00) dollars; for a capital stock over seventy-five thousand dollars, up to one hundred thousand dollars or more, a fee of one hundred (\$100.00) dollars. [*Act approved March 7, 1907, § 11.*] (*10th Sess. Chap. 137.*)

3987. *Certificate may be cancelled for impaired capital.*—Whenever it shall appear, from any examination authorized by this act, that the capital of such branch bank has become impaired, or that any portion thereof has been withdrawn from said branch bank by such foreign corporation or joint stock company, then it shall be the duty of the state auditor to cancel any outstanding certificate issued by him. [*Act approved March 7, 1907, § 12.*] (*10th Sess. Chap. 137.*)

3988. *Misstatement of amount of capital prohibited.*—No such branch bank of any foreign corporation or joint stock company, doing a banking business in this state, shall make use of or circulate any letter heads, bill heads, blank notes, blank receipts, blank check books, certificates or circulars wherein a greater amount of capital is claimed than the actual capital of such branch bank,

nor shall it otherwise, in any manner, advertise or set forth any such claim. [*Act approved March 7, 1907, § 13.*] (10th Sess. Chap. 137.)

3989. *Assets of bank not liable for redemption of circulating notes or bills.*—No portion of the capital, surplus, deposits or other assets of a branch bank of any foreign corporation or joint stock company, doing a banking business within this state, shall be liable for the redemption of any circulating notes or bills of such foreign corporation or joint stock company, nor for any other liabilities thereof, whatsoever, except for those arising out of the business of such branch bank. [*Act approved March 7, 1907, § 14.*] (10th Sess. Chap. 137.)

3990. *Penalties for false statements, entries or reports.*—Every officer, or other person mentioned and authorized by this act, who knowingly makes any false statement of facts, statement or report, and every officer, agent or clerk of any such branch bank who wilfully and knowingly makes any false entries in the books of such branch bank, or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine as to the condition of such branch bank, and every person authorized by the provisions of this Act, to make statements or reports, who wilfully and knowingly subscribes or makes any false statement or report, shall be deemed guilty of felony, and, upon conviction, subject to imprisonment at hard labor in the State Prison for a term of not less than one year, nor more than ten years, for each offense. [*Act approved March 7, 1907, § 15.*] (10th Sess. Chap. 137.)

3991. *Penalties for violation of this act.*—In addition to the penalties and punishments recited in the previous Sections of this act, every foreign corporation or joint stock company, and every officer, agent or employee thereof, violating any of the provisions of this act, shall, in addition to the penalties and punishments heretofore provided in this act, forfeit and pay to the State of Montana the sum of one thousand (\$1000.00) dollars for each violation. Such forfeiture may be recovered in an action by the attorney general, in the name of the State of Montana, brought in the District Court of the county where the branch bank shall be located. [*Act approved March 7, 1907, § 16.*] (10th Sess. Chap. 137.)

CHAPTER VI.

REGULATION OF BANKING CORPORATIONS.

Section 3992. *Unlawful to use title unless incorporated.*

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 “ 4013. *Taxation of banks.*
 “ 4014. *Penalties.*
 “ 4015. *This act to affect only domestic corporations.*

3992. *Unlawful to use title unless incorporated.*—It shall be unlawful for any person to use the words “trust,” or “trust company,” “saving,” or “savings bank,” in the title of any business, corporate or otherwise, unless such business be organized and incorporated under the laws of Montana, relating to “Trust Deposit and Security, and Savings Bank Corporations,” or such business is to be conducted by a foreign corporation which has fully complied with the laws of Montana, and is duly qualified and authorized to conduct business in the State of Montana. Any person or persons violating the provisions of this section, either individually or as an interested party in a co-partnership or corporation, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not less than three hundred nor more than one thousand dollars, or by imprisonment in the County Jail not less than sixty days nor more than one year, or by both such fine and imprisonment. [Act approved March 7, 1907.] (10th Sess. Chap. 159.)

3993. *Loans to officers or directors of banks prohibited.*—That on and after the passage of this act, it shall be unlawful for any bank, banking institution or trust company, organized and doing business under the laws of this State, to make a loan to any managing officer of such bank without taking good collateral or other ample and specific security therefor, and when such loan, or a loan made to a director of such bank, banking institution or

trust company, exceeds in amount ten per cent of its capital stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution or trust company, which said approval shall be entered upon the records of such bank, and the signatures of a majority of the Board of Directors approving same shall be attached thereto, and be and remain a permanent record of such bank. [*Act approved March 8, 1907, § 1.*] (*10th Sess. Chap. 164.*)

3994. *Penalty for violation of act.*—Any bank, or any managing officer of any bank, violating any of the provisions of this act, shall be liable to a fine of one thousand dollars, to be recovered in an action at law, for the use of the public school fund of the county where located, and, in addition, such managing officer may be imprisoned in the State Prison for not less than one year, nor more than ten years. [*Act approved March 8, 1907, § 2.*] (*10th Sess. Chap. 164.*)

3995. *Duty of county attorney to prosecute.*—It is hereby made the duty of the County Attorney, in each and every county in the State, to prosecute to a final determination any violation of this act, and of the State Bank Examiner to report same to such officer. [*Act approved March 8, 1907, § 3.*] (*10th Sess. Chap. 164.*)

3996. *Quarterly reports to state examiner.*—Each state bank and banking corporation, trust deposit and security corporation, savings bank corporation, or banking corporation organized under Article I, Chapter I, Title II, Part IV of the Civil Code of Montana for the transaction of any banking business, shall make to the State Examiner not less than four reports during each year, all at his call, not less than two calendar months to intervene between each call, according to the form which may be prescribed by him, verified by the oath or affirmation of the president or cashier, and attested by the signature of at least two of the directors thereof, which said statement must contain a full abstract of the general accounts of the bank, and exhibit in detail under appropriate heads, the resources and liability thereof, so as to plainly show all of the resources and liabilities, and the amount and kind thereof; which said statement shall be transmitted to the State Examiner within five days after the receipt of the request or requisition therefor made by him; and in such condensed form as may be required by the State Examiner, it must be published once in a newspaper of general circulation in the place where such bank is located, or if there be no newspaper of general circulation published in such place, then in one published nearest thereto within the County, and at the expense of the bank, and such proof of the publication of such statement shall be furnished as may be required by the State Examiner. The State Examiner shall also have power to call for special re-

ports from any particular bank, whenever in his judgment the same are necessary in order to have a full and complete knowledge of its conditions. [*Act approved February 16, 1905, § 1.*] (*9th Sess. Chap. 19.*)

3997. *Dividends.*—The directors of each bank may semi-annually, on the first Monday of January and July of each year, declare a dividend of so much of the net profits of the bank as they may deem expedient. [*Act approved February 16, 1905, § 2.*] (*9th Sess. Chap. 19.*)

3998. *Statement of dividend.*—In addition to the statement required by the preceding section, every such bank shall report to the State Examiner within ten days after declaring any dividend, showing the amount of such dividend and the amount of net earnings in excess of the dividend. Such statement shall be attested as provided for in the attestation of statement by the preceding section. [*Act approved February 16, 1905, § 3.*] (*9th Sess. Chap. 19.*)

3999. *Statements confidential.*—The information and showings made by the reports herein contemplated, other than such reports as are required to be published, shall be deemed for the confidential information of the State Bank Examiner's office only, and such information shall not be imparted to any persons who are not officially associated in and with the office of the State Bank Examiner, and such information shall be used by the State Bank Examiner only, in the furtherance of his official duties. [*Act approved February 16, 1905, § 4.*] (*9th Sess. Chap. 19.*)

4000. *Penalties for failure to make statement.*—If any such bank neglects to make out or transmit the statements and proof of publication thereof required by this act, it shall be subject to a penalty of Twenty (\$20.00) Dollars for each day in default after the periods respectively required by this act that it may delay to make and transmit any such statement. And should any such bank delay for the period of one month beyond the period when the same is required to be made, to make out and transmit the statements required by this act, or wilfully violate any provisions of this act, the directors shall be personally liable for all debts of such corporation contracted previous to and during the period of such neglect. [*Act approved February 16, 1905, § 5.*] (*9th Sess. Chap. 19.*)

4001. *False statements.*—Every officer or other person authorized by this act who wilfully and knowingly makes any false statement of facts, statement of account or report, and every officer, agent or clerk of any such bank who wilfully and knowingly makes any false entries in the books of such bank, or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine as to the

condition of such bank, and every person authorized by the provisions of this act to make statements or reports, who wilfully and knowingly subscribes or makes any false statement or report shall be deemed guilty of felony, and upon conviction, subject to imprisonment at hard labor in the State Prison for a term of not less than one nor more than ten years. [*Act approved February 16, 1905, § 6.*] (9th Sess. Chap. 19.)

4002. *Date of first report.*—The State Examiner shall call for a report from every such banking institution under the provisions of this act within sixty days after its passage and approval. [*Act approved February 16, 1905, § 7.*] (9th Sess. Chap. 19.)

4003. *Dissolution of banking corporation.*—Any banking association, trust deposit and security corporation, or savings bank, organized under the laws of Montana may be dissolved by the District Court of the county where its office or principal place of business is situated upon its voluntary application for that purpose. The application must be in writing and must set forth that at a meeting of the stockholders and members called for that purpose, the dissolution of the association was resolved upon by a two-thirds vote of all the stock, and that all claims and demands against the association have been satisfied and discharged.

The application must be signed by a majority of the Board of Directors or other officers having the management of the affairs of the association, and must be verified in the same manner as a complaint in a civil action.

A verified copy of the application shall be filed with the State Examiner or such other state officer as is by law authorized to examine such associations within ten days after the filing of such application with the District Court.

If the court is satisfied that the application is in conformity with this chapter it must order the application to be filed and the clerk to give not less than thirty nor more than fifty day's notice of the application by publication in some newspaper published in the county. At any time before the expiration of the time of publication any person may file his objections to the application.

Before the final hearing and determination of the application the State Examiner shall make a thorough examination of the affairs of such association and file a certified statement of such examination with the clerk of the court of the county where such application is made, which statement shall be a part of the papers in the case. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the state-

ments made therein are shown to be true, the court must declare the association dissolved. No stockholder or officer of such association shall be allowed to withdraw from such association or surrender or dispose of his shares of stock after the filing or making of such application for dissolution and prior to the final determination of the case. Upon the dissolution of such association by the District Court, the clerk of said court shall forthwith notify the Secretary of State of such dissolution, by sending a copy of the order of the court and said order and notice shall be filed by the Secretary of State with the original certificate of organization.

The application notices and proof of publication, objections, if any, and declaration of dissolution, constitute the judgment roll, and from the judgment, an appeal may be taken in the same manner as in other actions. [*Act approved March 6th, 1899, § 1.*] (*6th Sess. 109-110.*)

4004. *Impairment of capital. Duties of state examiner.*—Whenever the State Examiner, after a full and careful examination of the affairs of any banking corporation, trust deposit and security company or savings bank, organized under the laws of Montana, shall find evidences of impairment or insolvency, he shall immediately prepare and submit a statement of its condition to the Governor and Attorney General and if the Governor and Attorney General are satisfied from such statement that such impairment or insolvency exists, the Attorney General shall thereupon give notice in writing to each officer and stockholder of said banking corporation, trust deposit and security company or savings bank, together with a demand that said officers and stockholders shall make good such impairment or insolvency within three months from and after the date of said notice, and upon the failure of said officers and stockholders to make good such impairment or insolvency within the time stated, the Attorney General may thereupon make application in the name of the State to the Judge of the District Court of the District wherein such corporation is doing business for the appointment of a receiver to wind up the affairs of such corporation and pending such application or the hearing thereof, the Governor may at once direct the State Examiner to take charge of the business of such corporation until the receiver has been appointed by the Court therefor. [*Act approved March 6th, 1899, § 2.*] (*6th Sess. 110-111.*)

4005. *Increase of capital stock.*—Any banking association, trust deposit and security corporation or savings bank, organized under the laws of this state, may increase its capital stock, but no increase shall be valid until the whole amount of such increase is paid in in cash, and such payment certified under oath by the president or cashier, to the State Auditor, who shall give his cer-

tificate specifying the amount of such increase, with his approval thereof, and that it has been duly paid in as a part of the capital of such corporation. [*Act approved March 6th, 1899, § 3.*] (*6th Sess. 111.*)

4006. *Reduction of capital stock.*—Any banking association, trust deposit and security company or savings bank, may reduce its capital stock to any sum not below the amount required by law to authorize its formation, by a vote of its stockholders owning two-thirds of its stock, but no reduction shall be made until the amount of the proposed reduction is reported to the State Examiner and his approval thereof obtained in writing, and until notice of such reduction shall be given by publication for at least sixty days in some newspaper of general circulation, printed and published in the county wherein such corporation is doing business, *and provided further* that no reduction shall be construed as affecting the liability of shareholders for any debts of the association incurred prior to such reduction. [*Act approved March 6th, 1899, § 4.*] (*6th Sess. 111.*)

4007. *Transaction of business after insolvency. Penalty.*—Whenever any banking corporation, trust deposit and security company or savings banks organized under the laws of this state shall be insolvent or impaired condition in the manner described and set forth in § 4004 (2) of this Act, such banking corporation, trust deposit and security company or savings bank shall not accept or receive on deposit any money, bank bills or notes, United States Treasury notes or currency, or other notes, bills or drafts, circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States Treasury notes or currency, or other notes, bills or drafts, circulating as money or currency, separate and apart from the general assets of the bank, from and after the date such notice is given to its officers and stockholders, as set forth in § 4004 (2), of this act, and which trust deposits shall be kept separate and apart from the general assets of the bank until such impairment or insolvency has been made good, when such deposits received in “trust” may be transferred to the general assets of the bank on and by written consent of the State Examiner; *and further provided* that, in the event of such impairment or insolvency be not made good or removed within the period stated by the notice required as set forth in § 4004 (2), of this act, then any and all such “trust deposits” shall be returned to the depositors making them; *and further provided*, that any officer, director, cashier, manager, member, partner or managing partner thereof who shall knowingly accept or receive be accessory to or permit or connive at the receiving or accepting of such

trust deposits, except in the manner hereinbefore set forth in this Section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the State Penitentiary not exceeding five years, or by both fine and imprisonment as aforesaid. [*Act approved March 6th, 1899, § 5.*] (6th Sess. 111-112.)

4008. *Accepting deposits when insolvent. False entries. Penalty.*—Any officer, agent or clerk of any banking corporation, trust deposit and security corporation or savings bank, organized under the laws of this State, who wilfully and knowingly receives money, bank bills, notes of the United States or currency, or other bills or drafts circulating as money or currency, except in the manner hereinbefore set forth in § 4007 (5) of this act, or who subscribes or makes any false statement or entries in the books of such association or corporation, or knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such association or corporation, or wilfully subscribes or makes false reports, shall be subject to imprisonment at hard labor in the penitentiary for a term not exceeding five years. [*Act approved March 6th, 1899, § 6.*] (6th Sess. 112.)

4009. *Duties of state examiner.*—That all duties now required to be performed by, and all responsibilities now imposed upon the State Auditor, under the laws regulating the business of banking, shall hereafter be performed by the State Examiner, under title of State Bank Examiner and all reports and papers now on file in the State Auditor's office pertaining to banks are hereby transferred to the custody of the State Examiner. [*Act approved March 9, 1907, § 1.*] (10th Sess. Chap. 190.)

4010. *Reserve funds.*—Every bank shall keep on hand at all times at least fifteen per cent of its total deposits, of which such portion as the Board of Directors may determine, may be on deposit in banks in cities of the first and second class approved by the State Examiner as reserve banks, except in the case of banks which shall be approved by the State Examiner as reserve banks, which banks shall at all times keep on hand at least twenty-five per cent of their total deposits in lawful money or on deposit in banks subject to the approval of the State Examiner as reserve banks. [*Act approved March 9, 1907, § 2.*] (10th Sess. Chap. 190.)

4011. *Maximum liabilities.*—The total liabilities of any person, co-partnership or corporation, to any bank, for money borrowed, including in the liabilities of a co-partnership, the liabilities of the several members thereof, shall at no time exceed twenty per cent of the amount of capital, surplus of such bank; but the discounting of bills of exchange drawn in good faith against actu-

ally existing values, and discounting of commercial paper or business paper actually owned by the person negotiating the same and loans made on warehouse receipts and bills of lading representing, actual value, shall not be considered as money borrowed. [Act approved March 9, 1907, § 3.] (10th Sess. Chap. 190.)

4012. *Liability of stockholders.*—The stockholders of every corporation formed under this Chapter, or which may avail itself of its provisions, shall be severally and individually liable, equally and ratably, and not one for the other, for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. [Act approved March 9, 1907, § 4.] (10th Sess. Chap. 190.)

4013. *Taxation of banks.*—All real estate owned by any bank shall be taxed to the bank as other real estate is taxed in the county where the real estate is situated and the residue of its property being shares of stock in said bank shall be reduced to a cash value and assessed and taxed to the individual shareholder in the identical manner that other personal property is assessed in Montana, having in view that the assessment thereof for taxation shall not be at a greater proportion to face value than is the assessment upon other classes of personal property. [Act approved March 9, 1907, § 5.] (10th Sess. Chap. 190.)

4014. *Penalties.*—Whenever under the provisions of this law or of any law now in existence relating to banks it is unlawful to do or not to do anything, and the penalty is not prescribed, then such act shall be a misdemeanor and be punished as provided by law. [Act approved March 9, 1907, § 6.] (10th Sess. Chap. 190.)

4015. *This act to affect only domestic corporations.*—The provisions of this act shall apply only to banking corporations organized under the laws of this State. [Act approved March 9, 1907, § 7.] (10th Sess. Chap. 190.)

TITLE III.

INSURANCE COMPANIES.

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| CHAPTER | I. GENERAL REGULATION OF INSURANCE COMPANIES. |
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CHAPTER I.

GENERAL REGULATION OF INSURANCE COMPANIES.

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 “ 4041. *Insurance agents must be residents of state.*

4016. *Definitions and classifications.*—Corporations, Associations, and Societies organized to do the following described business are insurance corporations within the meaning of this Act.

First: To insure against loss or damage by fire, lightning, tornadoes or hail, all kinds of buildings, merchandise, household furniture and other property.

Second: To insure the lives and health of persons, and to grant, purchase or dispose of annuities.

Third: To insure against injuries, death or disablement of persons resulting from traveling, or from accident by land or by water; to insure against employees liability to employers, and of employers liability to employees; to insure the lives of horses, cattle or other live stock; to insure plate glass against breakage or steam boilers against explosion and against loss or damage to life or property resulting therefrom; against loss by burglary or theft, or both; and against the risks of navigation and transportation.

Foreign insurance corporations, associations and societies shall include every insurance corporation, association and society organized under the laws of the United States of America, or any state or territory of the United States of America other than this, or any other nation, government or country.

Domestic insurance corporations, associations and societies shall include every insurance corporation, association and society organized under the laws of this state. [*Act approved March 4th, 1897, § 1.*] (5th Sess. 76-7.)

4017. *License fee.*—All insurance corporations, associations and societies as hereinbefore specified in the preceding section, before commencing to do business in the State of Montana, shall be required to secure a license authorizing them to transact business of insurance corporations, associations or societies, and shall pay to the State Auditor for such license the following fees:

For a license to collect in any one year premiums amounting to the sum of five thousand dollars or less, one hundred and twenty-five dollars.

For a license to collect in any one year premiums over the sum of five thousand dollars, the sum of twenty dollars for each and every one thousand dollars to be so collected. [*Act approved March 4th, 1897, § 2.*] (5th Sess. 77.)

4018. *Duplicate license.*—The State Auditor, upon the payment of the fees enumerated in the preceding section shall issue in duplicate a license as therein provided, one copy of which shall be forthwith filed in the office of the state officer having jurisdiction over and charge of enforcement of the laws of the State of Montana, pertaining to insurance corporations. [*Act approved March 4th, 1897, § 3.*] (5th Sess. 77.)

4019. *Licenses expire December 31st.*—All licenses issued under this Act shall expire on the 31st day of December of each year. [*Act approved March 6, 1903.*] (8th Sess. Chap. 97.)

4020. *Duty to comply with laws.*—Nothing in this act shall be construed into permitting any insurance corporation, association or society to do business in the State of Montana even when in possession of the license provided for herein unless such corporation, association or society shall have complied with the laws of the State of Montana now in force or which may hereafter be enacted. [*Act approved March 4th, 1897, § 5.*] (5th Sess. 77.)

4021. *Penalty.*—Every foreign insurance corporation, association and society which may hereafter desire to engage in the business of insurance in this State shall first pay as a fee for filing the documents provided for in Section 4062 of the Civil Code of Montana, the sum of Three Hundred Dollars, and if any person or persons, agents, officers or trustees, of any corporation, association and society doing any insurance business shall cause to be

issued or procured, received or forwarded, application for insurance, or delivered policies for any company or companies or associations of persons not having complied with the provisions of this act, or shall adjust any loss, or in any manner either directly or indirectly aid in the transaction of insurance with any such company, in this State, or in any way violate the provisions of this Section shall upon conviction be deemed guilty of felony. [*Act approved March 4th, 1897, § 6.*] (5th Sess. 77-8.)

4022. *Officers guilty of misdemeanor.*—If any officer, trustee, agent, or other person shall directly or indirectly, collect any premium for any insurance company where such company has failed to obtain a license as provided for in this act; or where such company shall have failed to obtain a license as provided for in this act; or where such company has collected premiums in excess of the amount already provided for in the license already obtained and shall have failed for a period of forty-five days after collecting such excess to obtain the additional license provided for by the provisions of § 4017 (2) of this Act, such person upon conviction thereof shall be deemed guilty of a misdemeanor. [*Act approved March 4th, 1897, § 7.*] (5th Sess. 78.)

4023. *Agent must have license.*—Before transacting any fire, life or other indemnity or insurance business, each and every agent, firm or corporation acting as agent, solicitor or representative of such corporations or associations, shall procure annually from the State Auditor a certificate of authority or license as an agent, solicitor or representative of each corporation or association represented by him or them, and which certificate shall terminate or expire on the 31st (thirty-first) day of March of each year unless sooner revoked or terminated as otherwise provided, for which a fee of Five Dollars for each certificate shall be paid to the State Auditor, *provided*, that the State Auditor is hereby prohibited from issuing a certificate of authority to write policies of insurance, or to solicit and obtain and transact insurance business, as defined in this Act, to any person, agent, firm or corporation, unless such person, agent, firm or corporation is a legal resident of the State of Montana, at the time such certificate of authority is issued. Any person or persons who shall in any way violate the provisions of this Section, shall upon conviction be fined not less than Fifty Dollars nor more than One Hundred Dollars, or imprisoned in the county jail for not less than thirty days nor more than ninety days, or both such fine and imprisonment at the discretion of the court. [*Act approved March 6, 1903.*] (8th Sess. Chap. 97.)

4024. *Act does not apply to fraternal societies.*—Nothing in this act shall be construed as affecting fraternal associations or secret societies, which may insure the lives of their members only. [*Act approved March 4th, 1897, § 9.*] (5th Sess. 78.)

4025. *Publication of annual statement.*—Every insurance company of the character provided for in this chapter, doing business in the state, organized under the laws of this or any other state or country, shall publish annually, before the first day of May, in two newspapers of general circulation, to be approved by the State Auditor, one of which shall be published at the seat of government, and, in case of companies organized in the state, one in the county where the principal office is located, a certificate from the Auditor that such company has in all respects complied with the law of the state relating to insurance, and an affidavit of such publication made by the publisher or foreman of such newspaper shall be filed in the office of the Auditor within thirty days from the date of such publication. Said certificate shall also contain a statement made up from the annual report of said company of the actual amount of paid up capital, the aggregate amount of assets and liabilities at the date of such report, together with the aggregate income and expenditures of such company for the preceding year as shown by said report. [*Act March 2, 1907.*] (*10th Sess. Chap. 68.*)

4026. *Discrimination prohibited.*—No Insurance Company organized under the laws of this State, or doing business in this State, shall make or permit any discrimination or distinction in favor of individuals between insurants or property of the same class in the amount of premiums or rates charged for policies, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor shall any such company or agent pay or allow, offer to pay or allow, as inducement to insurance, any rebate of premium payable on the policy or any special favor or advantages in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance. [*Act approved March 7, 1903, § 1.*] (*8th Sess. Chap. 112.*)

4027. *Penalty.*—Every corporation or officer or agent thereof which shall violate any of the provisions of this Act shall be fined in any sum not exceeding five hundred dollars to be recovered by an action in the name of the State, and on collection to be paid into the County Treasury for the benefit of the common school fund. [*Act approved March 7, 1903, § 2.*] (*8th Sess. Chap. 112.*)

4028. *Violation by agent.*—Every officer or agent of any such corporation who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor. [*Act approved March 7, 1903, § 3.*] (*8th Sess. Chap. 112.*)

4029. *Revocation of license.*—It shall be the duty of the State Auditor, upon being satisfied that any corporation, or agent thereof, has violated any of the provisions of this Act to revoke the license of the company or agent so offending and no license shall be granted to such company or agent for one year after such revocation. [Act approved March 7, 1903, § 4.] (8th Sess. Chap. 112.)

4030. *Act does not apply to fraternal societies.*—Nothing in this Act shall be construed as affecting fraternal associations or secret societies, which may insure the lives of their members only. [Act approved March 7, 1903, § 5.] (8th Sess. Chap. 112.)

4031. *Fire insurance company. Must transact business through resident agent.*—It shall be unlawful for any fire insurance corporation legally authorized to transact business in the State of Montana, to write, place, or cause to be written or placed, any policy or contract of indemnity of insurance upon property situate in the State of Montana, in or through any such legally authorized corporation outside of the State of Montana, or in or through any other corporation outside of the State of Montana, or to adjust, settle or pay, or cause to be adjusted, settled or paid any loss arising from any contract of indemnity or insurance, except those made through a duly licensed agent of the insurance corporation, resident in the State of Montana. [Act approved March 4th, 1897, § 1.] (5th Sess. 79.)

4032. *State auditor may revoke license.*—Any corporation or corporations violating the provisions of the first section of this Act, upon notice and satisfactory proof thereof being made to the State Auditor, shall have its or their authority to transact business in the State of Montana, revoked for a period of not less than ninety days, and any Insurance Corporation whose license to do business may be revoked by the State Auditor, shall not again be permitted to do business in the State of Montana until all taxes and penalties due thereon shall have been paid, together with any expenses that may be due under the provisions of this Act to the State Auditor, and such corporation shall be only readmitted to transact business in the State of Montana upon a complete compliance with the laws now in force in regard to the admission of insurance corporations to do business in Montana. And no action shall be maintained in the courts of this state upon any policy or contract of indemnity or insurance written or placed in violation of the provision of this Act. [Act approved March 4th, 1897, § 2.] (5th Sess. 79.)

4033. *Duty of state auditor to inspect.*—When notice of the violation of the first section of this act is received by the State Auditor it shall be his duty, in person or by deputy, to forthwith visit the office of such corporation or corporations where such contract of insurance may have been written or made and demand

an inspection of the books and records of such corporation or corporations. Any corporation or corporations refusing to exhibit its or their books and records for his inspection shall be deemed guilty of a violation of the provisions of this act, and the penalty provided in this act shall be immediately enforced against such corporation or corporations by the State Auditor. [Act approved March 4th, 1897, § 3.] (5th Sess. 79-80.)

4034. *Compensation of auditor.*—The State Auditor shall receive as a compensation for the services rendered under the provisions of this act his necessary traveling expenses and ten dollars per diem, which sum shall be charged against the corporation or corporations so visited by him, and collected from such corporation or corporations. [Act approved March 4th, 1897, § 4.] (5th Sess. 80.)

4035. *Agent must be a resident.*—The State Auditor is hereby prohibited from issuing a certificate of authority to write policies of fire insurance, or to solicit and obtain and transact fire insurance business, to any person, agent, or firm or corporation, unless such person, agent, firm or corporation is a legal resident of the State of Montana, at the time such authority is issued. And whenever any person, agent, firm, or corporation so authorized to issue policies of fire insurance and solicit and transact fire insurance business shall remove from the State of Montana, the authority issued to such person, agent, firm, or corporation shall be revoked, and the same shall be null and void. [Act approved March 4th, 1897, § 5.] (5th Sess. 80.)

4036. *Foreign fire insurance companies must write business in state through local agent.*—No fire insurance company or association not incorporated under the laws of this State, authorized to transact business herein, shall make, write, place, or cause to be made, written or placed, any policy, duplicate policy, or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this State except after the said risk has been approved, in writing, by an agent who is a resident of this State, regularly commissioned and licensed to transact insurance business herein, who shall counter-sign all policies so issued and receive the commission thereon when the premium is paid, to the end that the state may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in this State. Nothing in this Act shall be construed to prevent any such insurance company or association, authorized to transact business in this State, from issuing policies at its principal or department offices, covering property in this State, provided that such policies are issued upon application procured and submitted to such Company by agents who are residents of this State, and licensed to transact the business of insurance herein, and who shall keep a record of

and countersign all policies so issued and receive the commission thereon when paid.

No provision of this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit while in the possession and custody of railroad corporations or other common carriers. [*Act approved March 6th, 1899, § 1.*] (6th Sess. 118.)

4037. *Reinsurance forbidden in company not authorized to do business in state.*—No fire insurance company or association shall reinsure in any manner whatsoever, the whole or any part of a risk taken by it on property situated or located in this State in any other company or association not authorized to transact business in this State. No fire insurance company or association shall transfer or cede, in any manner whatsoever, to any company or association not authorized to do business in this State, any risk or liability or any part thereof assumed by it, under any form of contract of insurance, covering property located in this State, including any risk or liability under any general or floating policy, or any agreement, general, floating, or specific, to reinsure excess loss by one or more fires. No fire insurance company or association shall reinsure, or assume as a reinsuring company, or otherwise, in any manner or form whatsoever, the whole or any part of any risk or liability, covering property located in this State, of any insurance company or association not authorized to transact business in this State. [*Act approved March 6th, 1899, § 2.*] (6th Sess. 118-119.)

4038. *Duties and powers of state auditor.*—Whenever the State Auditor shall have or receive information that any fire insurance company or association, not incorporated under the laws of this State, has violated any of the provisions of Section one of this Act, he is authorized, at the expense of such company or association, to examine, by himself or his accredited representative, at the principal office or offices of such company or association, located in the United States of America, or in any foreign country, and also at such other offices or agencies of such company or association as he may deem proper, all books, records and papers of such company or association, and may examine under oath the officers, managers and agents of such company or association as to such violation or violations. The refusal of any such company or association to submit to such examination or to exhibit its books and records for inspection shall be presumptive evidence that it has violated the provisions of the first section of this Act, and shall subject it to the penalties prescribed and imposed by this Act. [*Act approved March 6th, 1899, § 3.*] (6th Sess. 119.)

4039. *Report of risks.*—Every fire insurance company or association shall annually and at such other times as the State

Auditor may require, in addition to all returns now by law required of it or its agents or managers, make a return to the State Auditor in such form and detail as may be prescribed by him, of all reinsurance or cessions of risk or liability contracted for or effected by it, whether by issue of policy, entry or bordereau, or general participation agreement, or by excess loss, reinsurance, or in any other manner whatsoever, upon property located in this State, or covering, whether specified or otherwise, any risk or liability upon property so located, such return to be certified by the oath of its president and secretary, if a company or association of one of the United States, and if a company or association of a foreign country, by the oath of its managers in the United States as to such reinsurance or cessions effected through its branch office in the United States, and by the oath of its president and secretary, or by officers corresponding thereto, at its home office wherever located, as to reinsurance or cessions as aforesaid contracted for or effected through the foreign office. The refusal of any such company or association to make the returns herein required shall be presumptive evidence that it is guilty of violating the provisions of the second section of this Act, and shall subject it to the penalties prescribed and imposed by this Act. [*Act approved March 6th, 1899, § 4.*] (6th Sess. 119-120.)

4040. *Penalties.*—Any insurance company or association wilfully violating or failing to observe and comply with any of the provisions of this Act, applicable thereto, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof, and for each failure to observe and comply with any provisions of this Act; such penalty may be collected and recovered in an action brought in the name of the State in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment shall have its authority to transact business in this State revoked by the State Auditor and such revocation shall continue for at least one year from the date thereof, nor shall any insurance company or association whose authority to transact business in this State shall have been so revoked be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment and shall have filed in the office of the State Auditor a certificate signed by its president or other chief officer to the effect that the terms and obligations of the provisions of this Act are accepted by it as a part of the conditions of its right and authority to transact business in this State. [*Act approved March 6th, 1899, § 5.*] (6th Sess. 120.)

4041. *Insurance Agents must be residents of state.*—The State Auditor is hereby prohibited from issuing a certificate of authority to write policies of fire insurance, or to solicit and obtain

and transact fire insurance business, to any person, agent, firm or corporation, unless such person, agent, firm or corporation is a legal resident of the State of Montana, at the time such authority is issued. And whenever any person, agent, firm or corporation so authorized to issue policies of fire insurance and solicit and transact fire insurance business shall remove from the State of Montana, the authority issued to such person, agent, firm or corporation shall be revoked, and the same shall be null and void. [Act approved March 6th, 1899, § 6.] (6th Sess. 120-121.)

CHAPTER II.

STOCK AND MUTUAL FIRE INSURANCE CORPORATIONS.

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4042. (§ 650.) *Notice and certificate.*—When any number of persons associate themselves together for the purpose of forming an insurance corporation for any other purpose than life insurance, they shall publish a notice of such intention once a week for four consecutive weeks, in some public newspaper in the county in which such insurance corporation is proposed to be located; and they shall also make articles of incorporation, as provided in § 3818 (403) of this Code, and forward to the state auditor, who shall submit the same to the attorney general for examination, and if it shall be found by the attorney general to be in accordance with the provisions of this chapter, and not in conflict with the constitution and laws of the United States and this state, he shall make a certificate of the facts and return it to the state auditor, who shall reject the name or title applied for by any persons, when he shall deem the same so similar to any one already appropriated by any other company or corporation as to be likely to mislead the public.

State v. Rotwitt, 17 Mont. 50; 41 Pac. 1007. This system with relation to stock and mutual insurance companies extends to associations formed in this state and also foreign insurance companies.

N. W. I. Co. v. L. & C. Co., 28 Mont. 489; 72 Pac. 983. Sections 650 to 668 provide for the formation and regulation of domestic mutual insurance companies.

4043. (§ 651.) *Approval of state auditor of articles.*—When the articles of incorporation shall have received the approval of the state auditor, such articles, with the approval, must be filed, recorded, and certified, as required by § 3825 of this Code.

4044. (§ 652.) *Amount of capital stock.*—The capital of every corporation formed under the provisions of this chapter shall not be less than two hundred thousand dollars, nor more than one million dollars, as may be specified in the articles of incorporation. Any such corporation shall issue stock divided into shares of the par value of one hundred dollars each, at least fifty per cent of which stock shall be fully paid up in cash, and the remainder of the stock shall be paid for by notes made to the corporation by the stockholders, secured by at least one surety, or by mortgages or unincumbered real estate within this state, worth at least twice the amount of such notes, which notes or other security shall be approved by the state auditor.

4045. (§ 653.) *Mutual insurance.*—No corporation on the plan of mutual insurance shall commence business in this state, until agreements shall have been entered into for insurance with at least two hundred applicants, the premiums upon which shall amount to not less than twenty-five thousand dollars, of which at least five thousand dollars shall have been paid in cash, and for the remainder of which, notes of solvent parties, founded upon actual and bona fide applications for insurance, shall have been received; no one of the notes received, as aforesaid, shall amount to more than five hundred dollars, and no two thereof shall be given for the same risk, or made by the same person or firm, except when

the whole amount of such notes does not exceed the sum of five hundred dollars, nor shall any note be regarded or represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the corporation taking the same, upon a risk which shall be for no shorter period than twelve months; each of said notes shall be payable, in whole or in part, at any time when the directors shall deem the same requisite for the payment of losses by fire or inland navigation, and such incidental expenses as may be necessary for transacting the business of said corporation; and no notes shall be accepted as a part of such capital stock, unless the same shall be sufficiently indorsed or secured, if security is required by the directors, and no such note shall be surrendered while the policy for which it was given continues in force.

4046. (§ 654.) *Books for capital stock opened.*—Having published the notice, and filed the publisher's affidavit of the publication thereof with the state auditor, together with the articles of incorporation as required by § 4042 (650), of this chapter, the persons named in the articles of incorporation, or a majority of them, shall open books for the subscription of stock to the corporation at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the articles of incorporation is subscribed; or in case the business of such corporation is proposed to be conducted on the plan of mutual insurance, then they shall open books and receive propositions and enter into agreements in the manner, and to the extent, specified in § § 4044 (652) and 4045 (653) of this chapter.

4047 (§ 655.) *Number of directors, election of.*—The affairs of any corporation organized under the provisions of this chapter shall be managed by not more than thirteen nor less than three directors, all of whom shall be stockholders. Within thirty days after the requisite amount of stock has been subscribed, cash paid and notes given and approved, a meeting for the election of directors shall be called and held and directors elected as provided for the election of directors of trust deposit and security corporations in § 3926 of this Code, and the directors so elected shall continue in office until their successors have been duly elected and qualified, and thereafter directors shall be annually elected as provided in § 3830 (431) of this Code.

4048. (§ 656.) *Investment of funds.*—It shall be lawful for any insurance corporation organized under this chapter or incorporated under any law of this state to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unincumbered real estate within this state worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible com-

pany or companies, and the policy or policies transferred to said corporation, and also in stocks of this state or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this state, and to lend the same or any part thereof on the security of such stocks, or lands, or treasury notes, or upon bonds and mortgages, as aforesaid, and not otherwise, and to change and reinvest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid up capital stock of any such corporation organized under this chapter, or incorporated under any law of this state, may be invested in or loaned upon the pledge of public stocks of the United States, or any of the states, or stocks, bonds, or other evidences of indebtedness of any solvent dividend paying institution incorporated under the laws of this state or the United States, except their own stock; *Provided, always*, That the current market value of such stocks, bonds, or other evidences of indebtedness shall be at all times during the continuance of such loans at least twenty per cent more than the sum loaned thereon.

4049. (§ 657.) *Examination by auditor.*—Upon receiving notification that the requirements of the preceding sections have been complied with, the state auditor shall make an examination, or cause one to be made, by some disinterested person officially appointed by him for that purpose, and if it shall be found (if the examination shall be made other than by the auditor, then the finding shall be certified under oath) that the capital herein required by the corporation named, according to the nature of the business proposed to be transacted by such corporation, has been paid in and possessed by it in money, or in such stock, notes, bonds or mortgages as are required by §§ 4044 (652), 4045 (653) and 4048 (656), of this chapter, then he shall so certify, and if the examination be made by any other than the auditor, then the finding shall be certified under oath; or, in the case of a mutual insurance corporation, that it has received and is in actual possession of the capital, premiums, or bona fide agreements of insurance, and securities to the extent and value required by §§ 4044 (652), 4045 (653) and 4048 (656), of this chapter, and the name and residence of the maker of each premium note forming part of the capital of any such proposed mutual insurance corporation, and the amount of such note shall be returned to the auditor. The corporators or officers of any such corporation or proposed corporation contemplated by this chapter shall be required to certify under oath to the state auditor that the capital exhibited to the person making the examination directed in this section was bona fide property of the corporation so examined; the certificates above named shall be filed in the office of the said auditor, who shall thereupon deliver to such corporation a certified copy of the same, with his written permission for it to

commence business as proposed in its articles of incorporation, which certificate and permission, on being recorded in the office of the county clerk of the county in which the corporation is to be located, in a book prepared for that purpose, shall be its authority to commence business and issue policies, and such certified copy of said certificate and permission may be used in evidence for or against said corporation with the same effect as the originals.

4050. (§ 658.) *Powers.*—It shall be lawful for any corporation organized under this chapter and doing business in this state:

1. To insure houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and to make all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water.

2. To make insurance on the health of persons and against the personal injury, disablement, or death, resulting from traveling or general accident by land or water.

3. To insure the fidelity of persons holding places of public or private trust.

4. To receive on deposit, and insure the safe keeping of books, papers, moneys, stocks, bonds, and all kinds of personal property.

5. To insure horses, cattle, and other stock against loss or damage by accident, theft, or any unknown or contingent event whatever, which may be the subject of legal insurance; to lend money on bottomry or respondentia, and cause itself to be insured against any loss or risk it may have incurred in the course of its business, and upon the interest which it may have in any property by means of any loan or loans which it may make on mortgages, bottomry or respondentia, and generally to do all things proper to promote these objects. No corporation shall be organized to issue policies of insurance for more than one of the above mentioned purposes; and no corporation that shall have been organized for either one of said purposes shall issue policies of insurance for any other; and no corporation organized under this chapter, or transacting business in this state, shall expose itself to loss on any risk or hazard to an amount exceeding ten per cent. of its paid up capital, or write on a risk within the corporate limits of any one city an amount representing more than the paid up capital of the corporation, unless the excess shall be insured by the same in some other good and reliable company or companies. The restriction as to the amount of risk any such corporation shall assume, shall not apply to corporations organized to guarantee the fidelity of persons in places of public or private trust, or to corporations that receive on deposit and guarantee the safe keeping of books, money, and papers, and other property.

4051. (§ 659.) *Policies, how made.*—All policies or contracts of insurance made or entered into by any such corporation may be made either with or without the seal of the corporation, but such policies shall be subscribed by the president, or such other officer as may be designated by the directors for that purpose, and shall be attested by the secretary thereof.

4052. (§ 660.) *Increase of stock.*—If the capital stock of said corporation shall be increased as provided in § 3894 (525), of this code, a certificate showing such increase shall be filed with the state auditor, who shall make or cause to be made, an examination of the securities composing such capital stock thus increased as provided in § 4049 (657), and if satisfied therewith, such auditor shall thereupon deliver to such corporation a certified copy of such examination with his written permission to do business upon such increased capital, a copy of which certificate and permission shall be filed in the office of the secretary of state, and of the county clerk of the county where the principal place of business of said corporation is located.

4053. (§ 661.) *Dividends and profits.*—It shall not be lawful for the directors of any insurance corporation organized under this chapter, or incorporated under any law of this state, to make any dividend except from the surplus profits arising from their business, and in estimating such profits there shall be reserved therefrom a sum equal to fifty per cent. of the amount received as premiums on unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved all sums due the corporation on bonds and mortgages, bonds, stocks and book accounts, of which no part of the principal or interest thereon has been paid during the year preceding such estimate of profits and upon which action for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and in case of any such judgment the interest due or accrued thereon and remaining unpaid, shall also be reserved. The making of a dividend contrary to these provisions shall subject the corporation making it to a forfeiture of its charter.

4054. (§ 662.) *Real estate, acquiring limited.*—No corporation organized under this chapter shall purchase, hold or convey any real estate, except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be necessary in the proper transaction of its business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the corporation, or for money due; or,

4. Such as shall have been purchased at sales, upon judgments, decrees or mortgages obtained or made for debt or security; and it shall not be lawful for any such corporation to purchase, hold or convey real estate which shall be found in the course of its business not necessary for the transaction thereof; and all such last mentioned real estate shall be sold and conveyed within three years after the same shall have been declared by the state auditor unnecessary for its business, unless the corporation shall procure a certificate from the said auditor that the interest of said corporation will materially suffer by a sale within the time limited, in which event the sale may be postponed for such a period as said auditor shall direct in said certificate.

4055. (§ 663.) *Notes given for capital stock.*—All notes deposited with any mutual insurance corporation at the time of its organization, as provided for in §§ 4044 (652) and 4045 (653) of this chapter, shall remain security for losses and claims until the accumulation of the profits invested as required by section 4048 (656) of this chapter shall equal the amount of cash capital required to be possessed by stock corporations organized under this chapter, the liability upon each note decreasing proportionately as the profits are accumulated; but any note which may have been deposited with any mutual insurance corporation subsequent to its organization, in addition to cash premiums, or any insurance effected with such corporation may, after the expiration of the time of such insurance, or upon the cancellation by the corporation of the policy, be relinquished and given to the maker thereof, or his legal representatives upon paying his proportion of the losses and expenses, which may have accrued thereon during such term. The directors of any such corporation shall have the right to determine the amount of the note to be given in addition to the premiums by any person insured in such corporation; and every person effecting insurance in any mutual corporation, and his heirs, executors, administrators and assigns, continuing to be so insured, shall thereby become members of said corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses as aforesaid accruing to said corporation, in proportion to his or their deposit note or notes. Any person insured in any mutual corporation, except in the case of notes required by this chapter, to be deposited at the time of its organization, may at any time return the policy for cancellation, and upon the payment of the amount due at such time upon the premium note or notes shall be discharged from further liability thereon.

4056. (§ 664.) *Assessments.*—The directors shall, as often as they deem necessary, after receiving notice of any loss or damage, determine the sums to be paid by the several members as their respective portions of such loss, and publish the same in such manner as they shall deem proper, or the by-laws shall have prescribed; but the sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the officers of the corporation within thirty days after the publication of said notice; and if any member shall, for the space of thirty days after demand made personally or by letter for payment, neglect or refuse to pay the sum assessed upon him as a proportion of any loss aforesaid, the directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit, but execution shall issue for assessment and costs as they accrue only, and every such execution shall be accompanied by a list of losses for which such assessment was made. If the whole amount of deposit notes shall be insufficient to pay the loss, the sufferers insured by the said corporation shall receive toward making good their respective losses a proportionate share of the whole amount of said notes, according to the sums to them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his deposit note or notes.

4057. (§ 665.) *Name of company.*—Every insurance corporation hereafter organized as provided in this chapter shall, if it be a mutual corporation, embody the word “mutual” in its title, which shall appear upon the first page of every policy and renewal receipt; and every corporation doing business as a cash stock company, shall, upon the face of its policies, express in some suitable manner that such policies were issued by a stock corporation.

4058. *Annual statement.*—It shall be the duty of the president, or of the vice-president and secretary of each corporation organized under this chapter or incorporated under any laws of this state, or doing business in this state, annually, on the first day of January of each year, or within sixty days thereafter, to prepare under oath and deposit in the office of the State Auditor, a full, true and complete statement of the condition of such company on the 31st day of December preceding the filing of such statement, which statement shall exhibit the following items and facts in the following forms, viz:

1. The amount of capital stock of the corporation.
2. The names of the officers.
3. The name of the corporation and where located.
4. The amount of capital paid up.
5. The property or assets held by the corporation, specifying the value, as near as may be, of the real estate owned by such corporation and the amount of cash on hand deposited in banks to

the credit of the corporation, and in what banks the same is deposited, the amount of moneys, stocks or bonds deposited in any foreign country, State or Territory of the United States for the special benefit of the assured therein; the amount of cash in the hands of agents and in the course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate and its assessed valuation; the amount of all other bonds and loans, and how secured, with the rate of interest thereon, the amount due the corporation on which judgment has been obtained; the amount of stocks of this State, of the United States, of any incorporated city of this State, and of any other stock owned by the corporation, specifying the amounts, number of shares, and par and market value of each kind of stock; the amount of stock held by such corporation as collateral security for loans, with amount loaned on each kind of stock, and premium notes paid and unpaid; the amount of interest actually due and unpaid; and all other securities and their value; the amount for which premium notes have been given on which policies have been issued.

6. The liabilities of such corporation, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends either in scrip or cash, specifying the amount of each declared, but not due; dividends declared and due; the amount required to re-insure all outstanding risks on the basis of fifty per cent. of the premium on unexpired risks under one year, and pro rata, on all unexpired risks having more than one year to run; the amount due banks or other creditors; the amount of money borrowed, and the security therefor; all other claims against the corporation.

7. The income of the corporation during the previous year, specifying the amount received for premiums exclusive of premium notes, the amount of premium notes received; the amount received for interest; the amount received for assessments, calls on stocks or notes, or premium notes; the amount received from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid commissions; salaries, expenses and other charges of agents, clerks and other employes; the amount paid for salaries, fees and other charges of office and directors; the amount paid for local, State, national and other taxes and duties the amount paid for all other expenses, expenditures, including printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk.
10. The amount of risks written during the year then ending.
11. The amount of risks in force having less than one year to run.
12. The amount of risks in force having more than one and not over three years to run.
13. The amount of risks having more than three years to run.
14. The following question must be answered, viz: "Are dividends declared on premiums received for risks not terminated?"

The State Auditor must withhold or withdraw the certificate of authority from any such corporation neglecting or failing to comply with the provisions of this section. [*Act approved March 4, 1907.*] (*10th Sess. Chap. 72.*)

4059. (§ 667.) *Auditor may demand report at any time.*—The state auditor is hereby authorized and empowered to address any inquiries to any insurance corporation in relation to its business and condition, or any other matter connected with its transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and it shall be the duty of any corporation so addressed to promptly reply in writing thereto.

4060. (§ 668.) *What statement shall show.*—The statement of any corporation, the capital of which is composed, in whole or in part, of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming capital, and also what proportion of said notes are still held by such corporation and considered capital.

4061. (§ 669.) *Foreign insurance companies.*—It is unlawful for any insurance corporation or company, organized or associated for any of the purposes specified in this chapter, incorporated by, or organized under, the law of any other state, or the United States, or any foreign government, directly or indirectly, to take risks, or transact any business of insurance in this state, unless possessed of two hundred thousand dollars of actually paid up capital, exclusive of assets of any such corporation or company as shall be deposited in any other states or territories or foreign countries, for the special benefit or security of the insured therein; and any such company desiring to transact any such business as aforesaid by any agent or agents in this state must appoint one attorney in each county in which agencies are established, resident at the county seat, and must file with the state auditor a written instrument, duly signed and sealed, authorizing such attorney of such corporation to acknowledge service of process for and in behalf of such company in this state, consenting that such service of process, mesne or final, upon such attorney, shall be taken and held as valid as if served upon the company, and also a certified copy of their charter or articles of incorporation, together with a statement under the oath of the president or vice

president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital, with a detailed statement of the facts as required from corporations organized under the laws of this state; such statement shall also show to the full satisfaction of the state auditor that said company, if organized without the United States of America, has deposited in some one of the United States or territories a sum not less than one hundred thousand dollars for the special benefit or security of the assured therein, and shall file, also, a copy of the last annual report, if any, made under any law of the state, territory or foreign country by which such company was incorporated; and no agent shall transact business for any company whose capital is impaired by the liabilities, as stated in § 4058 of this chapter, to the extent of twenty per cent. thereof while such deficiency shall continue. It is unlawful for any person to act for any insurance company or corporation referred to in this chapter, directly or indirectly, in taking risks, or transacting business of insurance in this state, without procuring from the state auditor a certificate of authority that such company or corporation has complied with all the requirements of this chapter.

State v. Rotwitt, 17 Mont. 42; 41 Pa. c. 1004.

State v. Rotwitt, 18 Mont. 88; 44 Pa. c. 410.

State v. Rotwitt, 18 Mont. 92; 44 Pac. 407. A foreign insurance company, which has complied with the statutes relating to such company, and filed with

the state auditor all papers required by this section concerning stock and mutual insurance corporations, may compel the secretary of state to file in his office a certificate designating an agent to receive process.

N. W. I. Co. v. L. & C. Co., 28 Mont. 489; 72 Pac. 983.

4062. *Same.*—It shall not be lawful for any insurance company, association, or partnership, organized or associated for any of the purposes specified in this Chapter, incorporated by, or organized under the laws of any other state, or the United States, or any foreign government, directly or indirectly, to take risks or transact any business of insurance in this State, unless possessed of two hundred thousand dollars of actual paid up capital, exclusive of any assets of any such company as shall be deposited in any other states or territories, or foreign countries, for the special benefit or security of the insured therein; any such company desiring to transact any such business as aforesaid, by any agent or agents in this State, shall appoint one attorney in fact in each county in which agencies are established resident at the county seat, and shall file with the State Auditor a written instrument, duly signed and sealed, authorizing such attorney in fact of such company to acknowledge service of process, for and in behalf of such company in the State consenting that such service or process, mesne or final, upon such attorney shall be taken and held as valid as if served upon the company to the laws of this state, or any other territory or state, and waiving all claim of right or error by reason of such acknowledgment or

service, and also a certified copy of their charter or deed of settlement, together with a statement under the oath of the president or vice-president, or other chief officer, and the secretary of the company for which they may act, stating the name of the company and the place where located, the amount of its capital with a detailed statement of the facts and items, as required from companies organized under the laws of this State, as per Section 3920 (583) hereof; such statement shall also show to the full satisfaction of the State Auditor that said company, if organized without the United States of America, has deposited in some one of the United States or Territories a sum not less than one hundred thousand dollars for the special benefit or security of the assured therein, and shall file also a copy of the last annual report, made under any law of the State, Territory or foreign country by which said company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by the liabilities, as stated in § 3920 (583) of this Chapter, to the extent of twenty per cent. thereof while such deficiency shall continue; *Provided*, That plate glass, accident, steam boiler and live stock insurance companies shall not be required to have a larger capital than one hundred thousand dollars actually paid up. [*Act approved March 4, 1907.*] (*10th Sess. Chap. 87.*)

State v. Rotwitt, 17 Mont. 42; 41 State v. Rotwitt, 18 Mont. 92; 44 Pac. 1004.

State v. Rotwitt, 18 Mont. 88; 44 Pac. 410.

4063. (§ 671.) *Annual statement.*—The statements and evidences of investments required of foreign companies, as above, shall be renewed annually, in such manner and form as required by this chapter, and as said auditor may direct, with any additional statement of the amount of the losses incurred and premiums received in this state, during the preceding year, so long as such agency continues; and the said auditor, on being satisfied that the capital, securities and investments remain secure, as heretofore provided, shall furnish a renewal of his certificate.

4064. (§ 672.) *Agent of foreign insurance companies.*—Every agent of any insurance company must, in all advertisements of such agency, publish the location of the company, giving the name of the city, town, or village, in which the company is located, and the state or government under the laws of which it is organized, and must in no case advertise any merely authorized capital, but must in all such advertisements be limited to actual paid up capital and cash assets liable for losses only. The term agent or agents used in this chapter includes an acknowledged agent or surveyor, or any other person or persons who in any manner, directly or indirectly, transact or aid in transacting the insurance business of any insurance company not incorporated by the laws of this state. The provisions of the foregoing sections

relative to foreign companies apply to all companies, partnerships, associations or individuals, whether incorporated or not, but the provisions of this chapter do not apply to insurance upon goods or merchandise in transit.

4065. (§ 673.) *Auditor's duties.*—It is the duty of the state auditor, whenever he deems it expedient, to appoint one or more persons, not officers, agents, or stockholders of any insurance company or corporation doing business in this state, to examine into the affairs and condition of any insurance company or corporation doing business in this state, or to make such examination himself; and the officers or agents of such company or corporation must cause its books to be opened for the inspection of the auditor or the person or persons so-appointed, and otherwise facilitate such examination so far as may be in their power, and for the purpose of arriving at the truth in such cases the auditor, or person or persons so appointed by him, have power to examine, under oath, the officers or agents of any corporation or company, or others, if necessary, relative to the business and condition of said corporation or company, and, whenever the auditor deems it best for the interest of the public, he must publish the result of such investigation in one or more papers of this state; and, whenever it appears to such auditor, from such examination, that the assets and funds of any corporation in this state are reduced or impaired by the liabilities of said corporation, as described under the head of liabilities in the statement required by this chapter, more than twenty per cent. below the paid up capital stock required by this chapter, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such period as he may designate in such requisition; or he must communicate the fact to the attorney general, whose duty it shall then become to apply to the district court, or if in vacation, to one of the judges thereof, for an order requiring said corporation to show cause why their business should not cease, and the court, or judge, as the case may be, shall, after the service of reasonable notice upon the corporation, proceed to hear the allegations and proofs of the respective parties, and in case it shall appear to the satisfaction of said court, or judge, that the assets and funds of said corporation are not sufficient as aforesaid, or that the interests of the public require it, the said court or judge shall decree a dissolution of said corporation and a distribution of its effects. The said court or judge shall have power to refer the application of the attorney general to a referee to inquire into and report upon the facts stated therein.

4066. (§ 674.) *Deficiency in capital stock to be made good.*—Any corporation receiving such requisition from the state auditor, must forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount

required by this chapter, or the charter or articles of incorporation of said corporation; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as such auditor shall approve, it is lawful for said corporation to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholders may be entitled to in the proportion that the ascertained value of the funds of said corporation may be found to bear to its original capital, the value of such shares for which the new certificates must be issued to be ascertained under the direction of the said auditor, the corporation paying for the fractional part of shares; and it is lawful for the directors of such corporation to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the corporation; and in the event of additional losses accruing upon new risks, taken upon the expiration of the period limited by the auditor in the aforesaid requisition for the filling up of the deficiency in the capital of such corporation, and before such deficiency has been made up the directors are individually liable to the extent thereof.

4067. (§ 675.) *Deficiency in mutual companies.*—If upon the examination it appears to the said auditor that the assets of any corporation upon the plan of mutual insurance under this chapter are insufficient to justify the continuance of such corporation in business it is his duty to proceed in relation to such corporation in the same manner as is herein required in regard to joint stock corporations, and the directors of such corporations are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the time limited by the auditor for filling up the deficiency in the capital and before such deficiency is made up. Any transfer of the stock of any corporation organized under this chapter, made during the pending of any investigation herein required does not release the party making the transfer from his liability for losses which may have accrued previous to such transfer.

4068. (§ 676.) *Certificate of authority may be revoked.*—The state auditor is authorized to examine into the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance corporation, and whenever it appears to the satisfaction of said auditor that the affairs of any such company are in an unsound condition, he must revoke the certificate granted in its behalf, and must cause the notice of the revocation thereof to be pub-

lished in some newspaper of general circulation at the state capital, and the agent or agents of such companies are, after such notice, required to discontinue the issuing of any policy or the renewal of any previously issued.

4069. (§ 677.) *Deposits of security for policies.*—Whenever the existing or future laws of any other state or territory of the United States require of insurance corporations, incorporated by or organized under the laws of this state, having agencies in such other state or territory, or of the agents thereof, any deposit of securities in such state or territory for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificates of authority, license fees, or otherwise, greater than the amount required for such purposes from similar companies of other states or territories by the existing laws of this state, then, and in every such case, all companies of such states or territories establishing, or having heretofore established, any agency or agencies in this state, are required to make the same deposit for a like purpose with the auditor of this state, and to pay said auditor for taxes, fines, penalties, certificates of authority, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed upon or required by the laws of such state or territory of the companies of this state or the agents thereof.

4070. (§ 678.) *Publication of report and certificate.*—It is the duty of every insurance corporation or company of the kind authorized to do and doing business in this state, organized under the laws of this state, or of any other state, territory or country, to publish once, annually, in two newspapers of general circulation, one of which is published at the capital of the state, and in case of corporations organized in the state, one of which is published in the county where the principal office is located, a certificate from the state auditor that such company or corporation has in all respects complied with the laws of this state relating to insurance.

State v. Rotwitt, 17 Mont. 51; 41 Pac. 1007.

4071. (§ 679.) *Expenses of examination.*—The necessary expenditure for any examination made, or ordered to be made, by the state auditor under this chapter, must be certified by him and paid on his requisition by the corporation or company, which is the subject of such examination, but the state auditor has the power upon receiving information that the capital of any corporation or company is impaired, to call upon it for a full statement of its condition, and in event of refusal or neglect to answer the requisition of the auditor, as aforesaid, he must proceed to make the examination required by this chapter, and to take the necessary action to terminate the business of said corporation or company in this state.

4072. (§ 680.) *Auditor to furnish printed forms.*—It is the duty of the state auditor to cause to be prepared and to furnish to each of the corporations organized under the laws of this state, and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statements required by this chapter, and he may, from time to time, make such changes in the form of these statements as are best adapted to elicit from the corporations or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated.

M. I. Co. v. Winne, 20 Mont. 36; 49 Pac. 451.

N. W. I. Co. v. L. & C. Co., 28 Mont. 489; 72 Pac. 982. This section applies to a domestic and foreign mutual life insurance company and was not repealed by the act approved March 4, 1897 (page 76). This section does not interfere with interstate commerce. The last sen-

tence, "Insurance companies and corporations are subject to no other taxation under the laws of this state, except taxes on real estate and the fees imposed by law," is unconstitutional, but the remainder of the section is valid.

State v. Cudahy P. Co., 33 Mont. 190; 82 Pac. 836.

4073. (§ 681.) *Taxation.*—Each and every insurance corporation or company transacting business in this state must be taxed upon the excess of premiums received over losses and ordinary expenses incurred within the state during the year previous to the year of listing in the county where the agent conducts the business, properly proportioned by the corporation or company at the same rate that all other personal property is taxed, and the agent shall render the list, and be personally liable for the tax; and if he refuse to render the list or to make affidavit that the same is correct, to the best of his knowledge and belief, the amount may be assessed according to the best knowledge and discretion of the assessor. Insurance companies and corporations are subject to no other taxation under the laws of this state, except taxes on real estate and the fees imposed by law.

4074. (§ 682.) *Stock plan and mutual plan.*—It is unlawful for any corporation organized upon the mutual plan to do business and take risks upon the stock plan, or for a corporation organized as a stock corporation to do business upon the plan of mutual insurance.

4075. (§ 683.) *Mutual benefit companies not prohibited.*—Nothing in this chapter must be so construed as to prevent any number of persons, not exceeding two hundred, from making mutual pledges, and giving valid obligations to each other, for their own insurance from loss by fire or death; but such association of persons must in no case insure any property not owned and occupied by one of their number; and no life except that of one of their own number; nor are the provisions of this chapter applicable to such associations or companies. But such associations or companies must not pay any salaries or compensation to officers, agents, or other employes, or receive premiums, or make dividends.

CHAPTER III.

MUTUAL HAIL AND FIRE INSURANCE COMPANIES.

- Section 4076. Who may form company.*
“ 4077. *Articles of incorporation.*
“ 4078. *Directors.*
“ 4079. *Officers.*
“ 4080. *Bond of officers.*
“ 4081. *Powers of corporations.*
“ 4082. *Who may become members.*
“ 4083. *Policies. Liability of members.*
“ 4084. *Duty of insured in case of loss.*
“ 4085. *When obligations due.*
“ 4086. *Actions.*
“ 4087. *Annual statement.*
“ 4088. *Members may withdraw.*
“ 4089. *Examination of company.*
“ 4090. *Foreign mutual hail, cyclone and tornado insurance company.*
“ 4091. *Corporations now existing may comply with the requirements of this act.*

4076. *Who may form company.*—That any number of persons, not less than one hundred, residing in this State, who, collectively, shall own not less than five thousand acres of grain which they desire to have insured, may form an incorporated company for the purpose of mutual insurance of growing crops against loss or damage by hail, and farm improvements by fire. [*Act approved March 2, 1905, § 1.*] (9th Sess. Chap. 58.)

4077. *Articles of incorporation.*—Such persons shall file with the State Auditor a declaration of their intention to form a company for the purposes expressed in the preceding section, which declaration shall be signed by at least one hundred incorporators; and shall be accompanied by a copy of the proposed articles of incorporation, subscribed by three or more persons and acknowledged by each before some person authorized to take and verify acknowledgments of conveyance of real property, in which must be stated the name or title by which such corporation or company shall be known in law, the location of its principal business office, which office must be located in this State, the name and residence of the incorporators, the object of the corporation, with its plan of doing business clearly and fully defined, the number of its directors and the names of those elected to serve until its first annual meeting, which articles of incorporation shall be by the State Auditor submitted to the Attorney General for examination, and if such articles shall be found by the Attorney General to be in accordance with the provisions of this Chapter, and not in conflict with the constitution and laws of the United States

or of this State, he shall make a certificate of the fact and return it to the State Auditor, who shall reject the name or title applied for by any persons when he shall deem the same so similar to one already appropriated by another company or corporation as to be likely to mislead the public. When the articles of incorporation shall have received the approval of the Attorney General and the State Auditor, the Auditor must deliver the same to said incorporators, with such approval, and the same must be filed, recorded and certified as required by Section 3825 of the Civil Code of the State of Montana. [*Act approved March 2, 1905, § 2.*] (*9th Sess. Chap. 58.*)

4078. *Directors.*—The number of directors shall not exceed seven, the majority of whom shall constitute a quorum to do business, to be elected by the members by ballot, and they shall hold their offices until their successors are elected and qualified. [*Act approved March 2, 1905, § 3.*] (*9th Sess. Chap. 58.*)

4079. *Officers.*—The policy holders shall elect from their number a President, a Vice-President and Treasurer, and shall also elect a Secretary, who may or may not be a member of the company, all of whom shall hold their offices for one year and until their successors are elected and qualified. [*Act approved March 2, 1905, § 4.*] (*9th Sess. Chap. 58.*)

4080. *Bonds of officers.*—The Treasurer and Secretary shall each give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the Board of Directors. [*Act approved March 2, 1905, § 5.*] (*9th Sess. Chap. 58.*)

4081. *Powers of corporations.*—Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or this Act, as may be deemed necessary for the management of its affairs in accordance with the provisions of this Act, and may prescribe the duties of its officers and fix their compensation, and may alter and amend its by-laws when necessary. [*Act approved March 2, 1905, § 6.*] (*9th Sess. Chap. 58.*)

4082. *Who may become members.*—Any person owning property in this State, insurable under this Act, may become a member of this company, by insuring therein and not otherwise, and shall be entitled to all the rights and privileges pertaining thereto. The membership in such company shall consist of the persons insuring therein, *provided* that such number shall never be less than the number required by § 4076 (1) of this Act for the purposes of incorporation. [*Act approved March 2, 1905, § 7.*] (*9th Sess. Chap. 58.*)

4083. *Policies. Liability of members.*—Such company may issue policies only on growing crops, against loss or damage by

hail, and on farm improvements against loss by fire. All persons so insured shall make applications in writing and give their obligations to the company for the payment of losses and expenses as shall be required by the by-laws of said company. The liability of the members may be limited by the by-laws of such company; *Provided*, that in case the whole amount of such obligation shall be insufficient to pay all losses sustained after necessary expenses in any year, then sufferers insured by such company shall receive their proportionate share of the funds realized from such obligation in full satisfaction of such losses, and no member shall ever be called on to pay more than the full amount of his obligation. [Act approved March 2, 1905, § 8.] (9th Sess. Chap. 58.)

4084. *Duty of insured in case of loss.*—Every member of such company who may sustain loss or damage by hail or fire shall immediately notify the Secretary thereof, stating the amount of damage or loss claimed, then the person or persons authorized by the by-laws of such company to adjust losses, shall proceed to ascertain the amount of such loss or damage and adjust the same. If there is a failure of the parties to agree upon the amount of such damage or loss, the same shall be submitted to three persons as committee of reference, one of whom shall be selected by the claimant, one by the company and the third by such two persons, who shall be sworn to a faithful and impartial investigation, and award as may be provided by the by-laws of said company, who shall have authority to examine witnesses and determine all matters in dispute, and shall make their award in writing to the Secretary of the company, and such award shall be final, unless either party to the action shall appeal to the court within thirty days after such award: *Provided*, such final award shall not be made before the time for the maturity of said crop, or loss by fire. The pay of the membership of such committee shall be two dollars per day for each day of service so rendered in the discharge of their duties, which shall be paid by the claimant unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expense shall be paid by the company. [Act approved March 2, 1905, § 9.] (9th Sess. Chap. 58.)

4085. *When obligations due.*—All obligations shall be due at such time as the company in its by-laws provide, and losses shall not be due and payable until thirty days after said obligations are due and payable. *Provided*, that it shall be the duty of such company to use due diligence in the collection of such obligation. [Act approved March 2, 1905, § 10.] (9th Sess. Chap. 58.)

4086. *Actions.*—Suits at law may be brought against any member of such company who shall neglect or refuse to pay any obligation given by him or her according to the provisions of this act, and the directors or officers of any company so formed who

shall wilfully refuse or neglect to perform the duties imposed upon them by the provisions of this act, shall be liable in their individual capacity to the person sustaining such loss. Suit at law may also be brought and maintained against any such company by members thereof for losses sustained if payment is withheld after such losses become due. [Act approved March 2, 1905, § 11.] (9th Sess. Chap. 58.)

4087. *Annual statement.*—It shall be the duty of the Secretary to prepare an annual statement showing the condition of such company and the business transacted the preceding year, and present the same at the annual meeting, and file a verified copy of same with the state auditor as provided by law. [Act approved March 2, 1905, § 12.] (9th Sess. Chap. 58.)

4088. *Members may withdraw.*—Any member of such company may withdraw therefrom by surrendering his policy for cancellation and paying all obligation for the year's insurance. *Provided*, that the company shall have power to cancel the certificate of any member for good and sufficient cause by giving the insured notice to that effect, and not otherwise. [Act approved March 2, 1905, § 13.] (9th Sess. Chap. 58.)

4089. *Examination of company.*—It shall be the duty of the President, Vice-President and Secretary of every such company, on the first day of January, each year, or within a month thereafter, to prepare under their own oath and transmit to the State Auditor a statement of the condition of the company on the last day of the month preceding, in such form as the law may direct. If, upon examination, he is of the opinion that such company is doing business correctly, in accordance with the provisions of this Act, he shall thereupon furnish the company a certificate which shall be deemed authority to continue business the ensuing year. For such examination and certificate of approval, the company shall pay to the State Auditor, Ten (10.00) dollars; for agent's certificate of authority, five (\$5.00) dollars; and for filing annual statement, twenty-five (\$25.00) dollars; all of which shall be paid into the State Treasury and applied to the general fund. [Act approved March 2, 1905, § 14.] (9th Sess. Chap. 58.)

4090. *Foreign mutual hail, cyclone and tornado insurance companies.*—That all mutual hail, cyclone and tornado insurance companies or associations organized under the laws of another state and transacting business in this state shall be required to comply with the provisions of the laws governing fire and miscellaneous insurance corporations doing business in this state, provided that such companies shall be possessed of assets in excess of all liabilities of an amount equal to at least fifty thousand dollars. [Act approved March 9, 1907, § 1.] (10th Sess. Chap. 180.)

4091. *Corporations now existing may comply with the requirements of this act.*—That any company transacting business in this state upon the plan herein mentioned shall be granted ninety days from and after the approval and passage of this Act within which to comply with the requirements herein set forth. [Act approved March 9, 1907, § 2.] (10th Sess. Chap. 180.)

Home L. Assn. v. Nolan, 21 Mont. 205; 53 Pac. 738.

CHAPTER IV.

MUTUAL RURAL INSURANCE COMPANIES.

- Section 4092. *Who may organize.*
 “ 4093. *Articles of incorporations. Contents.*
 “ 4094. *Articles of incorporation, execution and filing.*
 “ 4095. *Certified copies as evidence.*
 “ 4096. *Fees for filing articles.*
 “ 4097. *Adoption of by-laws.*
 “ 4098. *What by-laws may cover.*
 “ 4099. *By-laws binding on members.*
 “ 4100. *Directors. Officers.*
 “ 4101. *When company may commence to issue policies.*
 “ 4102. *Minimum aggregate of insurance.*
 “ 4103. *Annual statement.*
 “ 4104. *Failure to file statement. Injunction.*
 “ 4105. *Insurance confined to members outside of cities.*
 “ 4106. *Business confined to home county.*
 “ 4107. *No profits or dividends.*
 “ 4108. *Voting.*
 “ 4109. *Amendment of articles.*
 “ 4110. *License to do business not required.*
 “ 4111. *General insurance laws not applicable.*
 “ 4112. *Act not to affect existing laws.*

4092. *Who may organize.*—Any number of persons, not less than twenty-five, who collectively shall own in any county in this state property of the value of twenty-five thousand dollars, which they desire to have insured, may form a corporation, under the provisions of this Act, for the purpose of insuring the property of the members, situate within the county where the operations of the corporation are to be carried on, against loss or damage by fire, or the elements of any such agencies as may be specified in the articles of incorporation. [Act approved February 19, 1907, § 1.] (10th Sess. Chap. 21.)

4093. *Articles of incorporation, contents.*—Articles of Incorporation must be prepared, setting forth:

1. The name of the corporation, which must include the name of the county in which the operations of the company are to be carried on.

2. The purpose for which it is formed.

3. The name of the county in which its operations are to be carried on, and the place within such county where its principal business shall be transacted.

4. The term for which it is to exist; not exceeding twenty years.

5. The number of its directors, which shall not be less than five, nor more than thirteen, and the names of those who are appointed to manage the affairs of the corporation until the first annual meeting of the members, and until their successors are elected and qualified.

6. The names of the incorporators, and the value of the property, desired insured, owned by each in the county where the operations of the company are to be carried on. [*Act approved February 19, 1907, § 2.*] (10th Sess. Chap. 21.)

4094. *Articles of incorporation. Execution and filing.*—The Articles of Incorporation must be executed in duplicate by at least three of the incorporators, and acknowledged before some officer authorized to take and certify acknowledgments of conveyances of real property, and one of the instruments shall be filed with the County Clerk and Recorder of the county where the operations of the corporation are to be carried on, and the other with the State Auditor. The copy of Articles of Incorporation filed with the State Auditor shall first be certified by the County Clerk as being a true and correct copy of the Articles filed with such County Clerk, and, thereupon, the persons named in the Articles of Incorporation, and the members, thereafter, of such corporation, shall be a body politic, and corporate for the term stated in the Articles, not exceeding twenty years. [*Act approved February 19, 1907, § 3.*] (10th Sess. Chap. 21.)

4095. *Certified copies as evidence.*—A copy of any Articles of Incorporation filed in pursuance of this Act, and certified by the State Auditor, must be received in all courts, and other places, as prima facie evidence of the facts therein stated, and of the due incorporation of the company named in such Articles. [*Act approved February 19, 1907, § 4.*] (10th Sess. Chap. 21.)

4096. *Fees for filing articles.*—The fee for filing the Articles of Incorporation with the County Clerk and Recorder shall be one dollar, and the fee for filing the Articles of Incorporation with the State Auditor shall be ten dollars. [*Act approved February 19, 1907, § 5.*] (10th Sess. Chap. 21.)

4097. *Adoption of by-laws.*—Upon filing the Articles of Incorporation, by-laws shall be adopted by a majority of the members present at a meeting called for that purpose by a majority of those executing the Articles of Incorporation, upon, at least, five days notice by mail to each member. [*Act approved February 19, 1907, § 6.*] (10th Sess. Chap. 21.)

4098. *What by-laws may cover.*—A corporation, organized under the provisions of this Act, may by its by-laws provide:

1. The terms of the directors, *provided*, that at least part of the directors shall be elected at each annual meeting and that the term of no director shall be longer than three years.

2. The date of the annual meeting of the members, at which directors shall be elected, *provided* that each member shall be permitted to cast one vote either in person or by proxy for each director to be elected, and each member shall be permitted to cast one vote either in person or by proxy for each director to be elected, and each member shall be permitted to cumulate his votes for one or more directors, not exceeding the number to be elected.

3. How the directors shall be elected in case no election occurs at the annual meeting.

4. How the by-laws shall be amended.

5. The duties and compensation of the officers, and the bonds to be required of them.

6. The manner and time of giving notice of all annual and special meetings of the members.

7. The character of property to be insured, and under what restrictions and limitations.

8. Restrictions and limitations as to membership, and the powers, duties and obligations of members.

9. The form of application and form of policy.

10. The manner of making and collecting assessments.

11. The manner of making proof, adjustment and payment of losses.

12. The manner of the withdrawal, suspension and expulsion of members.

13. The books and records to be kept by the corporation, reports required of the officers, and the manner of examining and auditing their accounts.

14. What shall be contained on the corporate seal, and when it shall be required to be used.

15. Such other matters as may be deemed necessary for the management of the affairs of the company, and the carrying out of the purposes for which it is incorporated. [*Act approved February 19, 1907, § 7.*] (10th Sess. Chap. 21.)

4099. *By-laws binding on members.*—The by-laws of any corporation organized under the provisions of this Act shall be binding on all members, and be, and become, as from time to time amended, a part of the contract of insurance between the company and the members. [*Act approved February 19, 1907, § 8.*] (10th Sess. Chap. 21.)

4100. *Directors. Officers.*—The general management of the affairs of the corporation shall be vested in the Board of Directors, who shall be members of the company, and such board shall

elect, from their number, a president and vice-president, and shall also elect a secretary and a treasurer, who may or may not be members of the company, all of whom shall hold their offices until the first meeting of the directors following the annual meeting of the members, unless removed by the Board of Directors. [*Act approved February 19, 1907, § 9.*] (10th Sess. Chap. 21.)

4101. *When company may commence to issue policies.*—No policies of insurance shall be issued by any company organized under the provisions of this Act until such company shall have received applications aggregating fifty thousand dollars, and, when applications aggregating that amount have been received, the company shall cause to be filed with the county clerk and recorder of the county where its operations are carried on a statement to that effect, certified to by its president and secretary, with its corporate seal attached. [*Act approved February 19, 1907, § 10.*] (10th Sess. Chap. 21.)

4102. *Minimum aggregate of insurance.*—Whenever insurance, carried by any corporation organized under the provisions of this Act, shall in the aggregate amount to less than fifty thousand dollars, no further applications shall be received or policies written, and all policies existing shall become null and void, notice of which shall be given to each member by mail, and the directors of the company shall proceed to wind up its affairs in such manner as a majority of the members may direct present at a meeting called for that purpose. [*Act approved February 19, 1907, § 11.*] (10th Sess. Chap. 21.)

4103. *Annual statement.*—Every corporation organized under the provisions of this Act shall, within twenty days after the thirty-first day of December of each year, cause to be filed, with the county clerk and recorder of the county where its operations are carried on, a statement in writing, signed by its president and secretary, with its corporate seal attached, showing the conditions of the company on that date, exhibiting the following facts:

1. The name of the president and secretary.
2. The date of the annual meeting.
3. The amount of insurance in force.
4. The number of members.
5. The number of assessments made during the year.
6. The amount paid in losses during the year.
7. The amount of the losses claimed and not paid with the reason for non-payment.
8. The number of members withdrawn, suspended and expelled during the year.
9. The number of new members admitted during the year.
10. The expenses during the year.
11. The amount of money on hand. A true copy of said statement verified by the county clerk, shall be sent by mail to the

State Auditor who shall file the same in his office, and said State Auditor shall have and is hereby granted authority to, at any time, investigate and examine the affairs and books of any such corporation, or such examination may be made by the State Examiner, who shall report his findings to the State Auditor. [*Act approved February 19, 1907, § 12.*] (10th Sess. Chap. 21.)

4104. *Failure to file statement. Injunction.*—No report, statement or return of any nature, shall be required of any corporation organized under the provisions of this Act other than that required by Section 4103. Any corporation failing to file such statement may, on suit brought by any member, be enjoined by the District Court of the county from carrying on any business until such statement is filed. [*Act approved February 19, 1907, § 13.*] (10th Sess. Chap. 21.)

4105. *Insurance confined to members outside of cities.*—No corporation organized under the provisions of this Act shall insure any property not owned by a member of the company, and no insurance shall be written or taken by any such corporation within the limits of any incorporated town or city. [*Act approved February 19, 1907, § 14.*] (10th Sess. Chap. 21.)

4106. *Business confined to home county.*—No company, organized under the provisions of this act, shall insure any property not situate within the county where its operations are to be carried on. [*Act approved February 19, 1907, § 15.*] (10th Sess. Chap. 21.)

4107. *No profits or dividends.*—No corporation, organized under the provisions of this act, shall accumulate any profits or pay any dividends. [*Act approved February 19, 1907, § 16.*] (10th Sess. Chap. 21.)

4108. *Voting.*—Each member of a corporation, organized under the provisions of this act, shall have but one vote at all meetings of the members, and no vote shall be cast by proxy, except as may be prescribed by the by-laws; *Provided, however,* that the provisions of this section shall not apply to the election of directors. [*Act approved February 19, 1907, § 17.*] (10th Sess. Chap. 21.)

4109. *Amendment of articles.*—Any corporation, organized under the provisions of this Act, may, by a vote of two thirds of the members present at any annual meeting, or at any special meeting called for that purpose, amend its articles of incorporation in any particular within the scope of this act, by causing amended articles of incorporation to be filed in the same form and manner as required for articles of incorporation, which amended articles of incorporation shall only be required to be signed by the president and secretary of the corporation with the corporate seal attached. [*Act approved February 19, 1907, § 18.*] (10th Sess. Chap. 21.)

4110. *License to do business not required.*—No agent of any corporation, organized under the provisions of this act, shall be required to procure any certificate of authority from any public official to transact business for the corporation, nor shall the corporation or any of its officers, agents or employes be required to pay any fee or license for the transaction of the business of the corporation except as provided, in this act. *Act approved February 19, 1907, § 19.] (10th Sess. Chap. 21.)*

4111. *General insurance laws not applicable.*—The provisions of § 4042 (650) to 4072 (682), both inclusive, of the Civil Code, and the provisions of the act of the Fifth Legislative Assembly, entitled: "An Act to provide for the licensing of insurance companies, associations and societies and doing business in the State of Montana," approved March 4, 1897, and all acts amendatory thereof, shall not apply to any corporation organized under the provisions of this act. [*Act approved February 19, 1907, § 20.] (10th Sess. Chap. 21.)*

4112. *Act not to affect existing laws.*—Nothing in this act shall be construed as being in conflict with, or repealing any law or act relating to the licensing of insurance companies. [*Act approved February 19, 1907, § 21.] (10th Sess. Chap. 21.)*

CHAPTER V.

LIFE INSURANCE COMPANIES.

Section 4113. *Incorporation.*

" 4114. *Stock companies; minimum capital.*

" 4115. *Mutual companies. Minimum number of applications.*

" 4116. *Stock or premium notes.*

" 4117. *Deposit of securities. Valuation of policies.*

" 4118. *Foreign companies. Capital or surplus. Investment.*

" 4119. *Collection of interest on securities deposited with state auditor.*

" 4120. *Return of deposits by state auditor.*

" 4121. *Service of process.*

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" 4123. *Vouchers for expenditures.*

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" 4125. *Real estate holdings permitted.*

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Section 4133. Certificate of authority of compliance with law.

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“ 4136. *Mutual life insurance companies must make annual accounting of surplus.*

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“ 4141. *Discrimination by life insurance companies prohibited.*

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“ 4143. *Auditor may revoke license.*

“ 4144. *Fraternal or secret societies not affected by this act*

“ 4145. *Life insurance companies prohibited from contributing funds for political purposes.*

4113. *Incorporation.*—Every life insurance company, except those organized upon the assessment plan and fraternal beneficiary associations, created under the laws of this or any other state or county, shall before issuing policies in this state, comply with the provisions of this Act applicable to such companies. When any number of persons associate themselves together for the purpose of forming a life insurance corporation as provided for in this Act, they shall publish a notice of such intention once a week for four consecutive weeks in some public newspaper in the county in which such insurance corporation is proposed to be located, and they shall also make articles of incorporation, as provided in § 3818 (403), of the Civil Code as amended, and forward to the State Auditor, who shall submit the same to the Attorney General for examination, and if it shall be found by the Attorney General to be in accordance with the provisions of this Act and not in conflict with the Constitution and the laws of the United States and this state, he shall make a certificate of the facts and return it to the State Auditor. The State Auditor shall reject the name or title applied for by any person, company or corporation when he shall deem the same so similar to any one already appropriated by any other company or corporation as to be likely to be misleading to the public. When the articles of incorporation shall have received the approval of the State Auditor such articles, with such approval,

must be filed, recorded and certified as required by Section 3825 of the Civil Code; *provided* that the articles of incorporation as filed with the Secretary of State shall be in duplicate, one copy of which shall be certified by him to the State Auditor the expenses of such certification to be borne by the insurance company. Having published the notice, and filed the publisher's affidavit of the publication thereof with the State Auditor, together with the articles of incorporation, the persons named in the articles of incorporation, or a majority of them, shall open books for the subscription of stock to the corporation at such times and places as to them may seem convenient and proper, and shall keep the same open until the full amount specified in the articles of incorporation is subscribed; or in case the business of such corporation is proposed to be conducted on the plan of mutual insurance, then they shall open books and receive propositions and enter into agreements in the manner and to the extent specified in this Act. [*Act approved March 8, 1907, § 1.*] (*10th Sess. Chap. 171.*)

4114. *Stock companies; minimum capital.*—Stock companies organized under the laws of this state shall have not less than One Hundred Thousand Dollars of Capital subscribed, fifty per cent. of which shall be paid up and invested in bonds of the United States or this state, or in bonds or mortgages upon unincumbered real estate in this state, worth, exclusive of improvements, at least double the sum loaned thereon, which security shall be deposited with the State Auditor, and upon such deposit and evidence by affidavit or otherwise satisfactory to the Auditor that the capital is all subscribed in good faith, and that the company is the actual and unqualified owner of the securities representing the paid up capital, he shall issue to such company the certificate hereinafter provided for, but no part of the fifty per cent. aforesaid shall be loaned to any stockholder or officer of the company. The remainder of such capital shall be paid within such time as the directors or trustees of the company may order, or as the State Auditor may direct, but not later than two years from date of issuance of Auditor's Certificate, and until paid it shall be secured by the notes of the stockholders of the company. *Provided, further,* that the additional fifty per cent. of the capital stock may also be deposited with the State Auditor under the conditions as the original fifty per cent., or any additional amount which is necessary for the purpose of complying with the laws of any other state to enable said company to do business in such state, and the company making such deposit shall be entitled to the income thereof and may, from time to time, with the consent of the State Auditor, when not forbidden by the law under which the deposit is made, change in whole or in part the securi-

ties which compose the deposit for other competent securities of equal par value. [*Act approved March 8, 1907, § 2.*] (*10th Sess. Chap. 171.*)

4115. *Mutual companies. Minimum number of applications.*—Life insurance companies organized under the laws of this state upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty lives for an average amount of at least One Thousand Dollars each, a list of which, giving the name, age, residence, amount of insurance and annual premium of each applicant, shall be filed with the State Auditor accompanied by the certificate, under oath, of the president, secretary and a majority of the board of directors of such company that the whole amount of the annual premium has been paid for in cash at adequate rates. [*Act approved March 8, 1907, § 3.*] (*10th Sess. Chap. 171.*)

4116. *Stock or premium notes.*—No note shall be accepted as part of the capital of a stock company, unless accompanied by a certificate of the clerk of the district court, or other court of record, of the county in which the person executing it resides, to the effect that the person making it is in his opinion pecuniarily good and responsible therefor in property not exempt from execution. [*Act approved March 8, 1907, § 4.*] (*10th Sess. Chap. 171.*)

4117. *Deposit of securities; valuation of policies.*—As soon as practicable after the filing of annual statement, the Auditor shall ascertain the net cash value of every policy in force upon the basis of the American Table of mortality and four and one-half per cent. interest, or actuaries' combined experience table of mortality and four per cent. interest, in all companies organized under the laws of this state. For the purpose of making such valuation he may employ a competent actuary, who shall be paid by the company for which the service is rendered; but the company may make such valuation and it shall be received by the Auditor upon satisfactory proof of its correctness. The net cash value of all policies in force in any such company being ascertained, the Auditor shall notify it of the amount, and within thirty days thereafter the officers thereof shall deposit with the Auditor the amount of the ascertained valuation in the securities specified in this Act. No stock company organized under the laws of this State shall be required to make such deposit until the cash value of the policies in force, as ascertained by the Auditor, exceeds the amount deposited by it as capital. *Provided*, that Mutual Companies, upon their organization, shall deposit with the State Auditor at least one half of the first annual premium in securities as provided for in this Act. *Provided, further*, that all companies provided for in this Act shall have the right at any time to change the securities on deposit by sub-

stituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of securities deposited, then the company, in the case of a stock company, may withdraw such excess but at any time cannot be less than Twenty-five Thousand Dollars on deposit. [*Act approved March 8, 1907, § 5.*] (*10th Sess. Chap. 171.*)

4118. *Foreign companies; capital or surplus. Investment.*—No company incorporated by or organized under the laws of any other state or government shall transact business in this state unless it is possessed of the actual amount of capital required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal to the amount required of capital stock companies, and the same is invested in bonds of the United States or of this state, or in interest paying bonds, when they are at or above par, of the state in which the company is located, or of some other state, or in notes or bonds secured by mortgages on unincumbered real estate within this or the state where such company is located, worth double the amount loaned thereon, which securities, shall, at the time, be on deposit with the superintendent of insurance, auditor, controller or chief financial officer of the state by whose laws the company is incorporated, or of some other state, and the Auditor of this state is furnished with a certificate of such officer, under his official seal, that he, as such officer, holds in trust and on deposit for the benefit of all the policy holders of such company the securities above mentioned. This certificate shall embrace the items of security so held, and show that such officer is satisfied that such securities are worth One Hundred Thousand Dollars. Nothing herein contained shall invalidate the agency of any company incorporated in another state by reason of its having exchanged the bonds or securities so deposited with such officer for other bonds or securities authorized by this Act, or by reason of its having drawn its interest and dividends on the same. [*Act approved March 8, 1907, § 6.*] (*10th Sess. Chap. 171.*)

4119. *Collection of interest on securities deposited with state auditor.*—Companies having on deposit with the State Auditor bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additional security when and as called for by the Auditor, and as provided for in this Act, or pending any proceedings to close up or enjoin it, the Auditor shall collect such dividends or interest and add the same to such securities. [*Act approved March 8, 1907, § 7.*] (*10th Sess. Chap. 171.*)

4120. *Return of deposit by state auditor.*—Upon request of any domestic insurance company the State Auditor may return

to such company the whole or any portion of the securities of such company held by him on deposit, when he shall be satisfied that the securities so asked to be returned are subject to no liability and not required to be longer held by any provision of law or purpose of the original deposit. And he may return to the trustees or other representative authorized for that purpose of a foreign insurance company any deposit made by such company when it shall appear that such company has ceased to do business in this state or in the United States, and that such company is not subject to any liability in this state for whose benefit such deposit was made. [*Act approved March 8, 1907, § 8.*] (*10th Sess. Chap. 171.*)

4121. *Service of process.*—Every life insurance company or organization organized under the laws of another state or country shall, before receiving a certificate to do business in this state, or any renewal thereof, file in the office of the State Auditor a power of attorney executed by the president and secretary of the company, or such other qualified officer authorized to sign such instrument, appointing a citizen of this state, resident within this state, the agent or attorney for the company, upon whom process of law can be served, and such power of attorney shall stipulate and agree, on the part of the company making the same, that any lawful process against said company which is served on such agent shall be of the same legal force and validity as if served on such company or association within this state; and also, that in case of death or absence of the attorney so appointed service of process may be made on the State Auditor of this state, or his successors in office, with the same power and effect as if served upon such agents; and such power of attorney cannot be revoked or modified (except that a new one may be substituted), so long as any policy or liability remains outstanding against such company in this state. The term "process," used above, shall be held and deemed to include any writ, summons or order whereby any action, suit or proceedings shall be commenced or which shall be issued in or upon any action, suit or proceedings, by any court, officer or magistrate. If such notice or process be served upon the State Auditor, as above provided, he shall immediately, upon its receipt acknowledge service thereon on behalf of the defendant company by writing thereon, giving the date thereof, and shall immediately return such notice or process in a registered letter to the clerk of the court in which the suit is pending, addressed to him by his official title, and shall forthwith mail such copy with a copy of his acknowledgment of service written thereon in a registered letter addressed to the person or corporation who shall be named or designated in such notice or process. A record of such action shall be kept by the State Auditor in a book prepared for that

purpose. [*Act approved March 8, 1907, § 9.* (10th Sess. Chap. 171.)]

4122. *Publication of auditor's certificate.*—Every insurance company of the character provided for in this Act, doing business in the state, organized under the laws of this or any other state or country, shall publish annually, before the first day of May, in two newspapers of general circulation, to be approved by the State Auditor, one of which shall be published at the capital city and, in case of companies organized in the state, one in the county where the principal office is located, a certificate from the Auditor that such company has in all respects complied with the law of the state relating to insurance, and an affidavit of such publication made by the publisher or foreman of such newspaper shall be filed in the office of the Auditor within thirty days from the date of such publication. Such certificate shall also contain a statement made up from the annual report of said company of the actual amount of paid up capital, the aggregate amount of assets and liabilities at the date of such report, together with the aggregate income and expenditures of such company for the preceding year, as shown by said report. [*Act approved March 8, 1907, § 10.*] (10th Sess. Chap. 171.)

4123. *Vouchers for expenditures.*—No life insurance company organized in this state shall make any disbursement of One Hundred Dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislative or public body, or before any department or officer of any state of government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure and stating the reasons for not obtaining such voucher. [*Act approved March 8, 1907, § 11.*] (10th Sess. Chap. 171.)

4124. *Investments.*—No life insurance company organized or incorporated under the laws of this state shall invest in or loan upon any shares of stock of any corporation, other than a municipal corporation; nor, excepting government, state or municipal securities, shall it invest in, or loan upon, any bonds or obligations not secured by adequate collateral security and when more than one third of the total value of the collateral security shall consist of shares of stock, it shall be deemed inadequate. No investment or loan, except policy loans, shall be made by any

such life insurance company, unless the same shall first have been authorized by the board of directors, or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Any such company, in addition to other investments allowed by law, may invest any of its funds and accumulations in the bonds of the United States or of this state or of any county, city, town or village, or duly organized school district therein, or of any municipality or civil division of any state and may loan upon improved unincumbered real property in any state fifty per cent. of the value of such property, or invest in the mortgage bonds of any dividend paying railway or street railway company duly incorporated and organized under the authority of this state or any other state and it may also make loans on the security of promissory notes amply secured by pledge of any bonds in which such insurance companies are hereby authorized to invest their funds, and may also make loans upon the security of its own policies, but no loan on any policy shall exceed the reserve value thereof. [*Act approved March 8, 1907, § 12.*] (*10th Sess. Chap. 171.*)

4125. *Real estate holdings permitted.*—Every such life insurance company organized in this state may acquire, hold and convey real property only for the following purposes and in the following manner:

1st. Such as shall be requisite for convenient accommodations in the transaction of its business.

2nd. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted for, or for moneys due.

3rd. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

4th. Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for such debts.

All such real property specified in Subdivisions 2, 3, and 4 of this section, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within two years after the company shall have acquired title to the same, or within two years after the same shall have ceased to be necessary for the accommodation of its business, and shall not hold such property for a longer period unless it shall procure a certificate from the State Auditor that its

interests will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to such time as the State Auditor shall direct in such certificate. [*Act approved March 8, 1907, § 13.*] (*10th Sess. Chap. 171.*)

4126. *Bonds of officers of mutual companies.*—The president and secretary of every mutual insurance company or association organized in this state under the provisions of this Act, shall be required to file with the State Auditor a bond each in the amount of Ten Thousand Dollars for the faithful performance of their duties as the respective officers of such company or association. [*Act approved March 8, 1907, § 14.*] (*10th Sess. Chap. 171.*)

4127. *Increase of capital stock.*—If the capital stock of any insurance company or association organized in this state and provided for in this Act shall be increased a certificate showing such increase shall be filed with the State Auditor, who shall make or cause to be made, an examination of the securities composing such capital stock thus increased, and if satisfied therewith, such Auditor shall thereupon deliver to such corporation a certified copy of such examination with his written permission to do business upon such increased capital, a copy of which certificate and permission shall be filed in the office of the Secretary of State, and of the county clerk of the county where the principal place of business of said corporation is located. [*Act approved March 8, 1907, § 15.*] (*10th Sess. Chap. 171.*) ,

4128. *Examination of companies.*—It shall be the duty of the State Auditor, whenever he deems it expedient, to appoint one or more persons, not officers, agents, or stockholders of any life insurance company or corporation organized and doing business in this state, to examine into the affairs and conditions of any life insurance company or corporation doing business in this state, or to make such examination himself; and the officers or agents of such company or corporation must cause its books to be opened for the inspection of the Auditor or the person or persons so appointed, and otherwise facilitate such examination so far as may be in their power, and for the purpose of arriving at the truth in such cases the Auditor, or person or persons so appointed by him, have power to examine, under oath, the officers or agents of any corporation or company, or others, if necessary, relative to the business and condition of said corporation or company, and, whenever the Auditor deems it best for the interest of the public, he must publish the result of such investigation in one or more papers of this state, and whenever it appears to such Auditor from such examination, that the assets and funds of any such corporation doing business in this state are reduced or impaired by the liabilities of said corporation as described under the head of liabilities in the statement required by this Act more than twenty per cent, below the paid up capital

stock required by this Act, he may direct the officers thereof to require the stockholders to pay in the amounts of such deficiency within such period, as he may designate in such requisition; or he must communicate the fact to the Attorney General, whose duty it shall then become to apply to the District Court, or if in vacation, to one of the judges thereof, for an order requiring said corporation to show cause why their business should not cease, and the court, or judge, as the case may be, shall, after the service or reasonable notice upon the corporation, proceed to hear the allegations and proofs of the respective parties, and in case it shall appear to the satisfaction of said court, or judge, that the assets and funds of said corporation are not sufficient as aforesaid, or that the interests of the public require it, the said court or judge shall decree a dissolution of said corporation and a distribution of its effects. The said court or judge shall have power to refer the application of the Attorney General to a referee to inquire into and report upon the facts stated therein. Any corporation receiving such requisition from the State Auditor, must forthwith call upon its stockholders for such amounts as will make its paid up capital equal to the amount required by this Act or the charter or articles of incorporation; and in case any stockholder shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as such Auditor shall approve, it is lawful for said corporation to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of said corporation may be found to bear to its original capital, the value of such shares for which the new certificate must be issued to be ascertained under the direction of the said Auditor, the corporation paying for the fractional part of shares; and it is lawful for the directors of such corporation to create new stock and dispose of the same, and to issue new certificates therefor, to an amount sufficient to make up the original capital of the corporation; and in the event of additional losses accruing upon new risks, taken upon the expiration of the period limited by the Auditor in the aforesaid requisition for the filling up the deficiency in the capital of such corporation, and before such deficiency has been made up the directors are individually liable to the extent thereof. If, upon the examination, it appears to the said Auditor that the assets of any corporation upon the plan of mutual insurance under this Act are insufficient to justify the continuance of such corporation in business, it is his duty to proceed in relation to such corporation in the same manner as is herein required in regard to joint stock corporations, and the directors of such corporation

are hereby made personally liable for any losses which may be sustained upon risks taken after the expiration of the time limited by the Auditor for filling up the deficiency in the capital and before such deficiency is made up. Any transfer of the stock of any corporation organized under this Act made during the pending of any investigation herein required does not release the party making the transfer from his liability for losses which may have accrued previous to such transfer. The State Auditor is authorized to examine into the conditions and affairs of any insurance company, as provided for in this Act, doing business in this state, not organized under the laws of this state, or cause such examination to be made by some person or persons appointed by him, having no interest in any insurance corporation and whenever it appears to the satisfaction of said Auditor that the affairs of any such company are in an unsound condition, he must revoke the certificate granted in its behalf, and must cause the notice of the revocation thereof to be published in some newspaper of general circulation at the state capital, and the agent or agents of such companies are, after such notice, required to discontinue the issuing of any policy or the renewal of any previously issued, and the expense of such examination shall be covered as provided for in the succeeding section. The State Auditor is hereby authorized and empowered to address any inquiries to any insurance corporation in relation to its business and condition, or any other connected with the transactions, which he may deem necessary for the public good, or for a proper discharge of his duties, and it shall be the duty of any corporation so addressed to promptly reply in writing thereto. The statement of any corporation, the capital of which is composed in whole or in part, of notes, shall, in addition to the foregoing exhibit the amount of notes originally forming capital, and also what proportion of said notes are still held by such corporation and considered capital. [*Act approved March 8, 1907, § 16.*] (*10th Sess. Chap. 171.*)

4129. *Expense of examination.*—The necessary expenditure for any examination made, or ordered to be made, by the State Auditor under this Act, must be certified by him and paid on his requisition by the corporation or company, which is the subject of such examination, but the state Auditor has the power upon receiving information that the capital of any corporation or company is impaired, to call upon it for a full statement of its condition, and in event of refusal or neglect to answer the requisition of the Auditor, as aforesaid, he must proceed to make the examination required by this Act, and to take necessary action to terminate the business of said corporation or company in this state. [*Act approved March 8, 1907, § 17.*] (*10th Sess. Chap. 171.*)

4130. *Annual statements.*—It shall be the duty of the president, or the vice-president and secretary of each corporation organized under this Act, annually on the first day of January of each year, or within sixty days thereafter, to prepare under oath and deposit in the office of the State Auditor, a full, true and complete statement of the condition of such company on 31st day of December preceding the filing of such statement which statement shall exhibit the following items and facts in the following forms, viz:

Name and Capital.

- The name of the company and where located.
- The names of the officers.
- The amount of capital stock.
- The amount of capital stock paid in.

Assets.

- The value of real estate owned by such company.
- The amount of cash on hand.
- The amount of cash deposited in bank, giving name of bank or banks.
- The amount of cash in the hands of agents and in the course of transmission.
- The amount of bank stocks with the name of the bank giving par value and market value of the same.
- The amount of stocks and bonds of the United States, and all other bonds, giving names and amounts, with the par and market value of each kind.
- The amount of loans secured by first mortgage on real estate.
- The amount of all other bonds and loans, and how secured with the rate of interest.
- The amount of premium notes on policies in force.
- The amount of notes given for unpaid stock, and how secured.
- The amount of assessments unpaid on stock or premium notes.
- The amount of interest due and unpaid.
- All other securities.

Liabilities.

- The amount of losses due and unpaid.
- The amount of losses adjusted but not due.
- The amount of losses unadjusted.
- The amount of claims for losses resisted.
- The amount of money or evidence of investment borrowed.
- The amount of dividends unpaid.
- The amount required to safely reinsure all outstanding risks.
- All other claims against the company.

Income During the Year.

- The amount of net cash premiums received.
- The amount of premium notes received.

The amount of interest received from all sources.

The amount received from all other sources.

Expenditures During the Year.

The amount paid for losses.

The amount of dividends paid to policy holders and amount to stockholders.

The amount of commissions and salaries paid to agents.

The amount paid to officers for salaries and other perquisites.

The amount paid for taxes.

The amount of all other payments and expenditures.

Miscellaneous.

The greatest amount insured on any one life.

The amount deposited in other states or territories as security for policy holders therein, stating the amount in each state and territory.

The amount of premiums received in the state during the year.

The amount paid for losses in this state during the year.

The whole number of policies issued during the year, with the amount of insurance affected thereby and total amount of risk.

All other items of information necessary to enable the Auditor to correctly estimate the cash value of policies, or to judge of the correctness of the valuation thereof.

The State Auditor is authorized to amend the form of annual statement, and to propose such additional information as he may think necessary to elicit a full exhibit of the standing of companies doing business in this state. [*Act approved March 8, 1907, § 18.*] (*10th Sess. Chap. 171.*)

4131. *Renewal of certificates.*—The statements and evidences of investments required of foreign companies, as above, shall be renewed annually in such manner and form as required by this Act, and as said Auditor may direct, with any additional statement of the amount of the losses incurred and premiums received in this state, during the preceding year, so long as such agency continues; and the said Auditor, on being satisfied that the capital, securities and investments remain secure, as heretofore provided, shall furnish a renewal of his certificate. [*Act approved March 8, 1907, § 19.*] (*10th Sess. Chap. 171.*)

4132. *Annual statement blanks.*—It shall be the duty of the State Auditor to cause to be prepared and to furnish to each of the corporations organized under the provisions of this Act, and to attorneys or agents of companies incorporated by other states or territories and foreign governments, who may apply for the same, printed forms of statement required by this Act, and he may, from time to time, make such changes in the form of these statements as are best adapted to elicit from the corpora-

tions or companies a true exhibit of their condition in respect to the several matters hereinbefore enumerated. [*Act approved March 8, 1907, § 20.*] (*10th Sess. Chap. 171.*)

4133. *Certificate of authority of compliance with law.*—Upon compliance with the provisions of this Act and the payment of the fees and taxes as provided by law, the State Auditor shall issue a certificate to any company organized or admitted under the provisions of this Act, which certificate shall be its authority to commence business and issue policies in this state, and which certificate shall be renewed annually as provided for in the preceding sections of this Act. Such certificate shall expire annually on the 31st day of December. [*Act approved March 8, 1907, § 21.*] (*10th Sess. Chap. 171.*)

4134. *To what companies this act applicable.*—The provisions of the Act of the Seventh Legislative Assembly, approved March 9, 1901, and relating to the conditions upon which foreign corporations may do business in this State, known as Senate Bill No. 46, shall not apply to foreign insurance companies that comply with the provisions of this Act. [*Act approved March 8, 1907, § 22.*] (*10th Sess. Chap. 171.*)

Note.—This Act has been repealed, but see § 4413 *infra*.

4135. *Existing companies shall comply with the law.*—Every company organized under the laws of another state which has been admitted and is authorized to transact business in this state, shall, under the provisions of this Act, within six months after the passage and approval of the same, comply with the provisions contained therein. [*Act approved March 8, 1907, § 23.*] (*10th Sess. Chap. 171.*)

4136. *Mutual life insurance companies must make annual accounting of surplus.*—Every life insurance company doing business in this state conducted on the mutual plan, or in which policyholders are entitled to share in the profits or surplus, shall make an annual apportionment and accounting of divisible surplus to each policy-holder beginning not later than the end of the third policy year on all participating policies hereafter issued; and each such policy-holder shall be entitled to and be credited with or paid, in the manner hereinafter provided, such a portion of the entire divisible surplus as has been contributed thereto by his policy. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 79.*)

4137. *Contingency reserve.*—Any life insurance company doing business in this state may accumulate and maintain in addition to the capital and surplus contributed by its stockholders and in addition to an amount equal to the net values of, its policies, computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of said net values, to-wit:

—When said net values are less than one hundred thousand dollars, twenty per centum thereof, or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-half of one per centum for each additional five million dollars up to fifty million dollars; one-half of one per centum for each additional twenty-five million dollars up to seventy-five million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed five per centum thereof; *provided* that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. *Provided further* that for cause shown the State Auditor may at any time and from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report. This section shall not apply to any company doing exclusively a non-participating business. [Act approved March 4, 1907, § 2.] (10th Sess. Chap. 79.)

4138. *Manner of apportionment to be selected by policy holder.*—Every policy holder shall on all participating policies hereafter issued, be permitted annually to select the manner and method of the application of the surplus to be annually apportioned to his policy from among those set forth in the policy. All apportioned surplus not actually paid over to the insured, or applied in the reduction of current or future premiums or in the purchase of paid-up insurance or pure endowment additions, shall be credited to the insured and carried as an actual liability and be paid at the maturity of the policy. [Act approved March 4, 1907, § 3.] (10th Sess. Chap. 79.)

4139. *Default in payment of premiums.*—In event of default in payment of any premium due on any policy, *provided* not less than three full years premiums shall have been paid, there shall be secured to the insured without action on his part, either paid-up or extended insurance as specified in the policy, the

net value of which shall be at least equal to the entire net reserve held by the company on such policy less two and one-half per centum of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the company on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the company at its home office within one month after date of default for cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid. [*Act approved March 4, 1907, § 4.*] (*10th Sess. Chap. 79.*)

4140. *Performance of this Act not waived by contract.*—No agreement between the company and the policy-holder or applicant for insurance shall be held to waive any of the provisions of this act. [*Act approved March 4, 1907, § 5.*] (*10th Sess. Chap. 79.*)

4141. *Discrimination by life insurance companies prohibited.*—No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals resident of Montana between the insured of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract it makes; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as inducement to insurance, any rebate of premium, payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase as inducement to insurance or in connection therewith any stock, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon or any thing of value whatsoever not specified in the policy. [*Act approved March 4, 1907, § 1.*] (*10th Sess. Chap. 73.*)

4142. *Penalties for violating.*—Every corporation or officer or agent thereof which shall violate any of the provisions of this act shall be fined in any sum not exceeding five hundred dollars to be recovered by an action in the name of the state, and on collection to be paid into the county treasury for the benefit of the common school fund. [*Act approved March 4, 1907, § 2.*] (*10th Sess. Chap. 73.*)

4143. *Auditor may revoke license.*—It shall be the duty of the State Auditor, upon investigation by him the offending party being notified and given an opportunity to appear and defend said Auditor after such investigation being satisfied that any corporation, or agent thereof, has violated any of the provisions of this act to revoke the license of the company or agent so offending, and no license shall be granted to such company or agent for one year after such revocation. [Act approved March 4, 1907, § 3.] (10th Sess. Chap. 73.)

4144. *Fraternal or secret societies not affected by this act.*—Nothing in this act shall be construed as affecting fraternal associations or secret societies, which may insure the lives of their members only. [Act approved March 4, 1907, § 4.] (10th Sess. Chap. 73.)

4145. *Life insurance companies prohibited from contributing funds for political purposes.*—No insurance company or association including fraternal beneficiary associations, doing business in this state, shall, directly or indirectly, pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other association organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this act, who participates in, aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this act, shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of this act, shall be liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding. [Act approved March 4, 1907.] (10th Sess. Chap. 74.)

CHAPTER VI.

ASSESSMENT LIFE INSURANCE COMPANIES.

Section 4146. *Incorporation.*

“ 4147. *Articles of incorporation.*

“ 4148. *Auditor's certificate and articles to be filed and recorded.*

“ 4149. *Directors.*

“ 4150. *Assessment notice.*

“ 4151. *How surplus funds invested.*

“ 4152. *Statement to auditor.*

“ 4153. *Auditor may employ experts.*

“ 4154. *Auditor to examine into financial condition.*

“ 4155. *Action instituted for non-compliance.*

“ 4156. *License to foreign corporations.*

“ 4157. *Duty of auditor.*

4146. (§ 700.) *Incorporation.*—Corporations for the purpose of furnishing life indemnity or pecuniary benefits to the widows, orphans, heirs or relatives by consanguinity or affinity, devisees or legatees of deceased members, or accident or permanent disability indemnity to members thereof, where the funds for the payment of such benefits are secured in whole or in part by assessment upon the surviving members, may be organized or do business in the state of Montana, subject to the conditions hereinafter provided. Such corporation must show by a sworn statement a guarantee fund of not less than twenty thousand dollars for the benefit and security of the policy holders or those holding certificates of life indemnity.

4147. (§ 701.) *Articles of incorporation.*—Any three or more persons, citizens of the United States, a majority of whom are residents of this state, may associate themselves together as a body corporate, for which purpose they must make, sign and acknowledge before any officer authorized to take acknowledgment of deeds in this state articles of incorporation, in which must be stated the name or title by which such corporation, association or society shall be known in law, the location of its principal business office, which office must be located in this state, the name and residence of the incorporators, the object of the corporation, with its plan of doing business, clearly and fully defined, the number of its directors, and the names of those elected to serve until its first annual meeting, the limits as to age of applicants for membership, which must be between the ages of sixteen and sixty-five, and that strict medical examinations are required, and that bona fide applications have been secured for at least five hundred thousand dollars by not less than two hundred persons, and two per cent. on such insurance, together with said guarantee fund of twenty thousand dollars, has

been paid into the treasury and deposited in trust for the benefit of the beneficiaries of such corporation, which articles of incorporation must be submitted to the state auditor, who must examine the same, and, if he finds that the objects and purposes are fully and definitely set forth within the provisions of this chapter, and that the name or title is not the same as that of some other corporation already organized under the laws of this state, or does not so closely resemble a title or name in use as to have a tendency to mislead the public, must approve the same. If for either of the aforesaid or other good and sufficient reasons the said auditor shall be unwilling to approve the articles of incorporation, he must immediately inform the incorporators of the fact, stating his objections fully in writing. If the articles are sufficient and satisfactory, the auditor must indicate his approval thereof under his hand and official seal.

4148. (§ 702.) *Auditor's certificate and articles to be filed and recorded.*—When the articles of incorporation have received the approval of the state auditor, such articles, with the approval, must be filed, recorded and certified as required by § 3825 of this Code.

4149. (§ 703.) *Directors.*—The affairs of all corporations organized or doing business under the provisions of this chapter, must be managed by not less than three directors, a majority of whom must be residents of this state, who must be elected from and by the members at such time and place, and for such period, not exceeding three years, as may be provided for in the by-laws, and may be eligible for re-election; but as near as practicable, an equal number must be elected each year.

4150. (§ 704.) *Assessment notice.*—Assessment notices sent to members by any corporation doing business under the provisions of this chapter, must state the object or objects for which the money to be collected is intended; and no part of the funds collected for the payment of death benefits must be applied for any other purpose.

4151. (§ 705.) *How surplus funds invested.*—Any corporation transacting business under the provisions of this chapter may provide in its by-laws for the accumulation of a surplus general or guarantee fund, which may be invested only in its corporate name in the United States, state, territorial or other first-class convertible bonds or stocks, upon which interest has not been in default. Such fund when so set apart and so invested, with the increase thereof, belongs to such corporation and not to the directors or officers thereof; and must be used only for mortuary benefits, without assessment, or applied in payment of future assessments, or otherwise used for the promotion of the object or objects for which such fund is specially provided and set

apart, and such use shall not be deemed or continued to mean a profit received by members within the meaning of the statutes of this state.

4152. (§ 706.) *Statement to auditor.*—Corporations organized under the provisions of this chapter or that have heretofore been organized within this state or territory of Montana for the purpose of furnishing life, accident or permanent disability, indemnity or mortuary benefit on the assessment plan, in accordance with the provisions of § 4146 (700) of this chapter, are not insurance corporations and are not subject to the laws of this state relating thereto, but must comply with and conform to all the requirements and provisions of this chapter; and must, by their president and secretary, or like officers, make to the state auditor annually, on or before the first day of December, a statement, under oath, for the preceding year upon blanks furnished by the state auditor, which statement must show their financial condition, assets, liabilities, total amount of indemnity in force, number of members, number whose membership has terminated during the year, and cause thereof, total receipts and sources thereof, total expenditures and objects thereof, and the average amount paid on each certificate, and must pay into the treasury of the state, upon filing said certificate, a fee of twenty-five dollars, and the said auditor must publish said statement in his annual report. But nothing herein contained applies to any organization of a purely social, religious or benevolent character, where no commissions are paid, and no salaried officers or agents are employed; or to any local association or society organized under, or subject to, the control of a grand or supreme body; or to any secret organizations, having subordinate lodges or councils, which have been organized under the laws of this state or any other state or territory, and which are now permitted to do business in this state.

4153. (§ 707.) *Auditor may employ experts.*—The state auditor has authority to appoint an expert to verify the statements aforesaid by examination of the books and papers of the corporation, and make such other examination as he may deem necessary. The expense of such examination must be paid by the corporation having its books examined, and must not exceed the necessary traveling and hotel expenses of said expert, and reasonable compensation of said expert while engaged in such examination.

4154. (§ 708.) *Auditor to examine into financial condition.*—The state auditor must, at the request of any corporation doing business under the provisions of this chapter in this state on the assessment plan, make an examination of such corporation, and furnish a certificate of the results of such examination, showing all its assets and how invested, and such other particulars as are

necessary to show the character and condition of said corporation, and the necessary expense of the said examination must be paid by the corporation requesting the same.

4155. (§ 709.) *Action instituted for non-compliance.*—Whenever any corporation, organized or having transacted business under the provisions of this chapter, neglects or refuses to make its annual statement, as required by this chapter, or whenever the state auditor finds upon examination, as provided in § 4153 (707) of this chapter, that any wilfully false or untrue statements in any material respect have been made, or that the business of the corporation has been conducted fraudulently or in wilful violation of any of the provisions of this chapter, or that the corporation has transacted business different from that authorized by its articles of incorporation, he must communicate the facts to the attorney general, whose duty it is to apply to the district court, where its principal office is located, for an order requiring the officers, directors or managers of such corporation to show cause why they should not be removed from office or its business closed; and the court must thereupon hear the allegations and proofs of the respective parties, and if it appears to the satisfaction of the court that any one or more of them have been guilty of fraud or any material irregularity or violation of the law to the injury of the said corporation, or of non-compliance with any of the provisions of this chapter, the court must decree a removal from office of the guilty party or parties, which decree forever bars them from holding a similar office, and must substitute a suitable person or persons to serve until the regular annual meeting, or until a successor or successors are regularly chosen or elected; or, if it appears to the said court that the interests of its members or of the general public so require, the court may decree a dissolution of such corporation and a distribution of its effects.

4156. (710.) *License to foreign corporations.*—Any corporation, association, or society, organized under the laws of any other state, territory or government, for the purpose of furnishing life, accident, or permanent disability indemnity upon the assessment plan, where benefits are paid to such as have an insurable interest only, complying with the provisions of this chapter, so far as applicable, and showing that it has deposited with the proper authorities or department of the territory, or state, or government under which it is incorporated, not less than fifty thousand dollars as a guarantee fund for the security of its members, may be licensed by the state auditor upon payment into the state treasury of a fee of one hundred dollars, to do business in this state, *provided* such corporation first deposits with the said auditor a certified copy of its charter or articles of incorporation, a copy of the statement of business for the preceding year, sworn

to by its president and secretary, or like officers, showing a detailed account of expenses and income, the amount of life indemnity in force, its assets and liabilities in detail, number of members, and certificate, sworn to by the president and secretary, or like officers, setting forth that an ordinary assessment upon the members is sufficient to pay its maximum certificate of membership to the full limit named therein; a copy of its policy or certificate of membership, application and by-laws, which must show that death losses are in the main provided for by assessments upon the surviving members; and it must legally designate a person or agent residing in the state to receive service of process for said corporation.

4157. (§ 711.) *Duty of auditor.*—Every such corporation, association or society must pay into the treasury of the state, upon filing each annual statement, a fee of twenty-five dollars. and in the event of its failure to make such statement on or before the first day of December of each year, the state auditor must revoke its license, and thereafter, or until such annual statement is made, it must not do business in this state. When the state auditor has reason to doubt the solvency of any foreign corporation, association or society acting under the provisions of this chapter, and when he is not fully satisfied with the certificate of the insurance commissioner, or other like officer, of the state, territory or government, of its organization, he may make an examination, as provided in this chapter for the examination of corporations organized in this state; and if he find that it has made fraudulent or untrue statements, or that it is conducting its business in an irregular or illegal manner; or if it appears that any such corporation in this state is conducting its business fraudulently, or is not in good faith carrying out its contracts with its members in this state, he must report the same to the attorney general, who must thereupon commence proceedings against such corporation or association, requiring it to show why its license to do business in this state should not be revoked.

CHAPTER VII.

ASSESSMENT ACCIDENT INSURANCE COMPANIES.

Section 4158. Incorporation.

- “ 4159. *Corporation subject to this act.*
- “ 4160. *Reincorporation of existing companies.*
- “ 4161. *Payment of maximum amount of policy.*
- “ 4162. *Reserve or emergency fund.*
- “ 4163. *Transfer of risks.*
- “ 4164. *Visitation by the auditor.*
- “ 4165. *Hearing thereon.*
- “ 4166. *Foreign corporations.*

- Section 4167. Appointment of attorney. Service.*
“ 4168. *Refusal or revocation of license.*
“ 4169. *Penalties for fraudulent acts.*
“ 4170. *Change of beneficiaries.*
“ 4171. *Exemption from execution.*
“ 4172. *Penalties.*
“ 4173. *Annual report.*
“ 4174. *Fees.*
“ 4175. *Proceedings to enjoin.*
“ 4176. *Regulations for conduct of business.*
“ 4177. *Amendments of by-laws. Quorum.*

4158. (§ 720.) *Incorporation.*—Nine or more persons may become a corporation for the purpose of transacting the business of accident insurance upon the assessment plan, by filing in the office of the secretary of state a declaration signed by each of them and duly acknowledged setting forth their intention to form such a corporation, the name of the proposed corporation, the place where its principal office shall be located in the state, the mode in which its corporate powers are to be exercised, and of electing directors, or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs, and its funds, and a majority of whom shall be citizens of this state, which election shall be in the manner prescribed by its by-laws. Such declaration shall have endorsed thereon or annexed thereto, and as a part thereof, the sworn statement of three such persons, that at least five hundred persons eligible under the proposed laws of the corporation to be assured therein have, in good faith, made application in writing for such an insurance. If all the requirements of this act have been complied with, the state auditor shall file such declaration and record it with the certificate of the attorney general, in a book to be kept for that purpose, and deliver to the corporation a certified copy of the papers so filed and recorded, with his license, in writing, to the corporation to engage in the business proposed in the declaration, which certified copy and license shall be filed in the office of the clerk of the county where the office of the corporation is to be located. Such corporation shall not commence the business of insurance until at least five hundred persons have subscribed in writing to be insured therein in the aggregate amount of at least five hundred thousand dollars, and have each paid in one per cent. on the amount of the insurance severally subscribed for in cash, and the same is deposited in bank to the credit of the indemnity fund, to be held in trust for the benefit of the insured or their beneficiaries; and the state auditor shall have further certified that it has complied with the provisions of this act, and is authorized to transact business. [Act approved March 8, 1893.]

4159. (§ 721.) *Corporations subject to this act.*—Any corporation, association or society, which issues any certificate, policy, or other contract whereby upon the death or other physical disability of the assured thereunder resulting from accidental injuries, any benefit is to accrue to the assured or to his legal representatives or to the beneficiaries designated by him, which benefit, the accumulation of reserve or emergency funds and the expenses of the management and prosecution of the business, are provided for by payments to be made, either at periods named in the contract or upon assessment as required by persons holding similar contracts, and where in the assured's liability to contribute to the payments of benefits accrued or to accrue is not limited to a fixed sum, shall be deemed to be engaged in the business of accident insurance upon the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly organized and authorized corporations, which shall be subject only to the provisions and requirements of this act. Nothing contained in this act shall be construed to apply to secret or fraternal societies, lodges, or councils now doing business in this state, which conduct their business and secure members on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges, or councils, and which are under the supervision of a grand or supreme body, nor to any association organized solely for benevolent purposes and not for profit, and which do not employ paid agents in soliciting business. [*Act approved March 8, 1893.*]

4160. (§ 722.) *Reincorporation of existing companies.*—Any existing domestic corporation, transacting the business of accident insurance upon the assessment plan, may re-incorporate under the provisions of this act, under its existing corporate name, by filing with the secretary of state the declaration required by this act, signed and duly acknowledged by a majority of its board of directors, with a statement in like manner signed and acknowledged by them that such corporation has accumulated the fund required by this act of corporations formed hereunder, and that the same is deposited in bank or trust company, to the credit of the indemnity fund, to be held in trust for the benefit of the assured or their beneficiaries, and the certificate of the attorney general of the state, whereupon the secretary of state shall record and deliver to such corporation a certified copy of such declaration and of such certificate, together with his license to transact business, and upon filing the same in the office of the clerk of the county wherein its principal office is located, the same shall thereupon be deemed to be incorporated under the provisions of this act. It shall not be obligatory upon any such existing corporation to reincorporate hereunder, and any such domestic corporation may continue to exercise all the rights, powers

and privileges not inconsistent with this act pursuant to its articles of association or incorporation, the same as if reincorporated under this act. [*Act approved March 8, 1893.*]

4161. (§ 723.) *Payment of maximum amount of policy.*—Every policy or certificate hereafter issued by any corporation doing business under this act and promising a payment to be made upon a contingency of death or disablement by accident, shall specify the sum of money which it promises to pay upon the happening of each contingency insured against, and the number of days, after satisfactory proof of the happening of such contingency on which payment shall be made. Upon the occurrence of such contingency, unless the contract shall have been voided by fraud or by breach of its conditions, the corporation shall be obligated to the insured or his beneficiaries for such payment at the time and to the maximum amount specified in the policy or certificate for such contingency. If the state auditor shall be satisfied upon investigation that any such corporation has refused or failed to make such payment for thirty days after it became due, and after proper demand, he shall notify the corporation to issue no new policies or certificates until such indebtedness is fully paid, and no officer or agent of the corporation shall make, sign or issue any policy or certificate of insurance when such notice is in force. [*Act approved March 8, 1893.*]

4162. (§ 724.) *Reserve or emergency fund.*—Every such corporation, association, or society, shall accumulate and maintain a reserve or emergency fund of at least five thousand dollars, such fund if not already accumulated, shall be accumulated by every such existing corporation, association or society, within six months from the time this act takes effect, and by every corporation, association or society organized under this act, within six months of the completion of its organization and the receipt of its certificate of authority to transact business in this state, and every corporation subject to the provisions of this act shall add to such emergency fund thereafter, two and one-half per cent. of the amount realized from every premium, assessment or periodical call until such fund shall be equal to the amount of two dollars for every five thousand dollars of insurance in force. Such emergency fund, or any part thereof, may be used for the payment of death and indemnity claims; *Provided*, That if the amount of such fund be thereby reduced below the amount contemplated in this act, the amount by which such fund is reduced be made up and restored within six months thereafter. Such fund may be held in cash, or invested in the same class of securities required by law for the investment of funds by insurance corporations; and nothing herein contained shall prevent the creation and accumulation of other funds in excess of the amount herein required to provide for the purposes of such corporation.

This act shall not be construed to limit the accumulation of a reserve or emergency fund by any corporation, association or society subject to the provisions hereof, where such fund and its accretions are for the benefit or protection of the assured, their legal representatives or beneficiaries. Any such corporation, association or society may in its discretion, through its officers or directors, deposit with the auditor such securities and for such amounts as may be approved by him. Such deposit shall be received and held by the auditor for the sole benefit of the assured in such corporations, and subject to the provisions of such deed of trust as shall be approved by the auditor and accepted by him from the officers or directors of the corporation; but the deposits with the insurance department, and all other investments of reserve funds, shall be made in the same class of securities as are required by law for the investment of funds by other insurance corporations. [*Act approved March 8, 1893.*]

4163. (§ 725.) *Transfer of risks.*—No such corporation, association, or society, organized under the laws of this state, shall transfer its risks to, or re-insure them in, any other corporation unless the contract or transfer or re-insurance is first submitted to and approved by a two-thirds vote of a meeting of the policy holders or certificate holders of such corporation, called to consider the same, of which meeting a written or printed notice shall be mailed to each policy or certificate holder at least thirty days before the day fixed for such meeting. Such vote of approval of a contract of re-insurance or transfer shall act as a dissolution of the corporation, and all liability upon its certificates shall cease at the expiration of five days following such vote, but its officers may thereafter perform any act necessary to close its affairs. No such corporation, association or society organized under the laws of this state shall transfer its risks or assets or any part thereof to, or re-insure its risks or any part thereof in, any insurance corporation or association of any other state or country which is not, at the time of such transfer or re-insurance, authorized to do business in this state under the laws thereof. [*Act approved March 8, 1893.*]

4164. (§ 726.) *Visitation by the auditor.*—Proceedings to restrain corporations from doing business. All corporations, associations, and societies to which this act is applicable, with their books, papers, and vouchers, shall be subject to visitation and inspection by the state auditor or by such person as he may designate. The auditor may address any inquiries to any such corporation, association or society in relation to its doings or condition or any other matter connected with its transactions relative to the business contemplated by this act. All officers of such corporation, association or society shall promptly reply in writing to all such inquiries, under the oath of its president,

secretary, or other officers if required. When the auditor, on investigation, shall be satisfied that any corporation organized under the laws of this state, or doing business in this state of the character defined in this act is insolvent because of matured death claims or other obligations due and unpaid, exceeding its assets and death and disability premiums, assessments or periodical payments called or in process of collection, or has exceeded its powers, failed to comply with any provisions of this act, or is conducting business fraudulently, he shall report the facts to the attorney general, who, if he shall be of the opinion that the facts require such action, must thereupon apply to the district court, at a special term thereof, within the judicial district in which the principal office of such corporation within this state is located, for an order requiring the officers of such corporation, to show cause, at a reasonable time and place within such district, why such corporation should not be restrained from continuing to transact business, with power to the court to adjourn the hearing thereon from time to time not exceeding sixty days in all. [*Act approved March 8, 1893.*]

4165. (§ 727.) *Hearing thereon.*—Such corporation, association, or society shall be entitled to be heard, and to a trial by jury of the facts stated in the report, if the same shall be traversed, and to examine papers and witnesses under oath in the usual mode of trials of actions. If the trial is by jury the court shall submit to the jury specific request to find covering the matters in issue separately, and the jury shall return a special verdict on each question submitted; and if by such verdict it shall be found that the corporation is insolvent because of matured death claims, or other obligations due and unpaid, exceeding its assets as hereinbefore provided, the court may render judgment that it and each officer thereof be perpetually enjoined from exercising any corporate rights, privileges or franchises of such corporation and that it be dissolved, and that a receiver be appointed, and an account taken and an equitable distribution of its property, including all deposits with public officers, among its creditors and policy holders be made. If no charge of insolvency be made in such report, or if made be not established by the verdict of the jury, but it shall be found by such verdict that the corporation has exceeded its corporate powers or failed to comply with any provision of this act, or has conducted its business unlawfully, the court may make and enter a judgment enjoining and restraining it from the commission of such acts, or such of them as the court may determine, and in case of failure to desist therefrom within the time to be specified in such judgment, that the corporation be dissolved. [*Act approved March 8, 1893.*]

4166. (§ 728.) *Foreign corporations.*—Any corporation organized under authority of another state or government to issue, or which is engaged in the business of issuing, policies or certificates of insurance on the assessment plan—as a condition precedent to transacting business in this state shall deposit with the secretary of state a certified copy of its charter, a statement under oath of its president and secretary in the form by the auditor required, of its business during the year ending on the thirty-first day of December immediately preceding; a certificate under oath of its president and secretary that it is paying and for the twelve months then next preceding has paid the maximum amount named in its policies or certificates in full; a copy of its policy or certificate and application, which must show that the liability of the assured to contribute to the payment of benefit is not limited to a fixed sum; a certificate from the proper authority of its home state, that corporations of this state, engaged according to the provisions of this act in accident insurance on the assessment plan are, upon compliance of the laws of such state, legally entitled to do business in such state; that such corporation is properly authorized to transact business in its own state, and evidence satisfactory to the auditor that such corporation has accumulated and maintains a reserve or emergency fund equal to that required of similar corporations in this state, as provided in § 4162 (724) of this act, that such accumulation is permitted by the law of its corporation and is for the benefit of policy or certificate holders only and is invested as authorized under the law of its incorporation. Upon the filing of such statements and continued compliance with the above requirements it shall be the duty of the auditor to issue annually to such corporation a proper authority to transact business in this state. Such corporation shall annually thereafter report to the auditor on or before the first day of March a complete statement of its business for the year ending December the thirty-first next preceding as provided in § 4173 (735) of this act. The license or authority of such corporation to do business in this state shall be revoked by the auditor whenever he is satisfied on investigation that such corporation is not paying the maximum amount named in its policies or certificates in full. Upon such revocation the auditor shall cause notice thereof to be published in the newspaper in which the general laws are published, and no new business shall be thereafter done by it or its agents in this state. When any other state or country shall impose any license fees, taxes or penalties, upon any corporation of this state, transacting the business herein provided for which are not imposed, or which are in excess of those imposed by this act, like license fees, taxes or penalties shall be imposed upon corporations of the same kind and their agents of such state or country doing business in this

state. If the laws of such state where such company is organized will not admit companies organized in this state, or doing business under this act, to do business in such state, then such company shall not be admitted to do business in this state. The state auditor is authorized to place such construction upon the minor provisions of the insurance laws of other states as will in his judgment harmonize with this law when justice and equity will so warrant. [*Act approved March 8, 1893.*]

4167. (§ 729.) *Appointment of attorney. Service.*—Every such corporation organized under the laws of another state or country shall before doing business in this state appoint in writing some proper person of lawful age a resident of this state to be its true and lawful attorney, upon whom all processes in any action or proceeding against it may be served; and in such writing shall agree that any lawful process against it, which is served on said attorney, shall be of the same legal force and validity as if served on the corporation and that the authority shall continue in force, so long as any liability remains outstanding against the corporation in this state. A copy of the writing duly certified and authenticated shall be filed in the office of the secretary of state, and copies filed by him shall be deemed sufficient evidence thereof. Services upon such attorney shall be deemed sufficient service upon the principal. When legal process against any such corporation is served upon the attorney he shall immediately notify the corporation of such service by registered letter, prepaid directed to its secretary; or in the case of a corporation of a foreign country to the resident manager if any in this country; and shall within two days after such service forward in the same manner a copy of the process served on him to such secretary or manager, or to any person previously designated by the corporation in writing. The plaintiff in each process so served shall pay to the attorney at the time of such service a fee of two dollars, which shall be recovered by him as a part of the taxable cost if he prevails in the suit. The attorney shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. [*Act approved March 8, 1893.*]

4168. (§ 730.) *Refusal or revocation of license.*—Any corporation subject to the provision of this act the license of which is refused, or revoked may make application to the district court for an order directing the state auditor to show cause at special term why such revocation of said license should not be set aside, or license issued. On the return of such order the issues of fact shall be put in writing and shall be tried at special term in the usual mode of trials of fact in actions unless said corporation shall request a trial by jury—if a jury trial is requested by said corporation the court shall order said case to be placed on the

general term calendar for trial. If the verdict or decision shall be in favor of said corporation the court shall direct the auditor to issue a license to said corporation forthwith. [*Act approved March 8, 1893.*]

4169. (§ 731.) *Penalties for fraudulent acts.*—Any solicitor, agent, examining physician, applicant or other person, who shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference for any application for insurance; or for the purpose of obtaining any money or benefit knowingly or wilfully presents or causes to be presented a false or fraudulent claim; or any proof in support of such a claim for the payment of the loss upon a contract of insurance issued by any corporation incorporated or doing business under the provisions of this act; or prepares, makes or subscribes a false or fraudulent account, certificate, affidavit of proof of loss or other document or writing with intent that the same may be presented or used in support of such a claim, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars or more than one thousand dollars, or by imprisonment in the county jail for not less than three months, or more than six months, or both such fine and imprisonment at the discretion of the court. [*Act approved March 8, 1893.*]

4170. (§ 732.) *Change of beneficiaries.*—Membership in any such corporation shall give to any policy or certificate holder thereof the right at any time with the consent of such corporation to make a change in his payee or beneficiary or beneficiaries, without requiring the consent of such payee or beneficiaries. [*Act approved March 8, 1893.*]

4171. (§ 733.) *Exemption from execution.*—The money or benefit provided or rendered by any corporation authorized to do business under this act shall be exempt from execution and shall not be liable to attachment by trustee or to be seized, taken or appropriated by any legal or equitable process to pay any debt or liability of the policy or certificate holder or the beneficiary or beneficiaries of a deceased policy or certificate holder, unless such policy or certificate shall be expressly made payable to a creditor and then for no more than his claim with lawful interest. [*Act approved March 8, 1893.*]

4172. (§ 734.) *Penalties.*—Any officer or agent of any such corporation, association or society, subject to any of the provisions of this act, who shall neglect or refuse to comply with any such provision or who shall make in any report or statement any intentionally false or fraudulent statement or shall refuse to permit the state auditor or any examiner duly authorized by him for the purpose to make an examination of its condition and business, books, papers and vouchers, or any person who shall act

within this state as agent, solicitor or collector for any such corporation which shall have failed, neglected, or refused to comply with or violated any of the provisions of this act or shall have failed or neglected to procure from the auditor the certificate of authority required by law to transact business in this state, shall forfeit to the people of this state the sum of one hundred dollars for every such offense. If an examination of the condition and business of any such corporation transacting business in this state shall be prevented by any such refusal the auditor shall revoke the certificate of authority issued to such corporation and it shall thereafter be unlawful for it to do business in this state until it shall have submitted to an examination and the auditor shall have issued to it a new certificate of authority authorizing it to continue business in this state. [*Act approved March 8, 1893.*]

4173. (§ 735.) *Annual report.*—Every such corporation, association or society doing business under this act, shall on or before the first day of March in each year, make and file with the state auditor a report of its affairs and operations, during the year ending on the thirty-first day of December, immediately preceding, which report shall be in lieu of all other reports required by the insurance law of this state, shall be verified by such officers of the corporation as the auditor may require, and shall contain answer to the following questions:

1. Number of certificates or policies issued during the year or applicants admitted.

2. Amount of death indemnity effected thereby.

3. Number of death losses incurred.

4. Number of death losses paid and amount thereof.

5. Total number of indemnity claims paid and amount thereof.

6. Number of death and number of indemnity claims unpaid.

7. Does corporation charge annual dues or membership fees? If so, how much?

8. Total amount received and whether from assessments, annual dues, membership fees or other sources, and the disposition thereof.

9. Does corporation use moneys received for payment of claims, to pay expenses in whole or in part; and if so state the amount used.

10. What is the amount of emergency fund and how invested?

11. If organized under the laws of this state, state such fact and the date of organization.

12. Number of policies in force and death insurance in force at the beginning and end of year.

Any corporation refusing or neglecting to make such report or to make payment of any of the fees required by this act may

upon the suit of the auditor be enjoined by the supreme court from carrying on any business, until such report and payment shall be made and until the cost of such action be paid. [*Act approved March 8, 1893.*]

4174. (§ 736.) *Fees.*—The fees for filing statements, certificates or other documents required by this act or for any service or act of the auditor shall be the same as are provided in the case of life insurance companies, and each corporation authorized to transact business under this act shall pay on filing its application and charter thirty dollars, and for each annual statement thereafter twenty dollars, which shall be in lieu of all other fees for the state, county or municipal, except as provided in § 4167 (729) of this act. [*Act approved March 8, 1893.*]

4175. (§ 737.) *Proceedings to enjoin.*—No order, judgment or decree, providing for an accounting or enjoining or restraining or interfering of the prosecution of the business of any domestic insurance corporation subject to the provisions of this act or appointing a temporary or permanent receiver thereof shall be made or granted otherwise than upon the application of the attorney general on his own motion or after his approval of a request in writing therefor, of the state auditor, except in an action by a judgment creditor or in proceedings supplementary to execution. [*Act approved March 8, 1893.*]

4176. (§ 738.) *Regulations for conduct of business.*—The trustees or directors or the persons designated in the by laws of corporations subject to the provisions of this act, shall fix the fees, rates and amounts of premiums, assessments or periodical calls, and the time and manner of the payment thereof, and the risk to be assumed by such corporation and the duration thereof, and may change the same from time to time as the experience of the corporation may require. An affidavit made by the officer, bookkeeper or clerk of any such corporation having charge of the mailing of notices of premiums, assessments or periodical calls, that any such notice was mailed, stating the day of mailing, shall be presumptive evidence thereof. [*Act approved March 8, 1893.*]

4177. (§ 739.) *Amendments of by-laws. Quorum.*—At the stated meetings for the election of officers, trustees, directors or managers of any such corporation, association or society a majority of the persons entitled to vote at such meeting shall not be necessary to constitute a quorum. Subject to the by-laws, if any, adopted by the members of the corporation, the directors or other persons, by whatsoever title designated, who are to have and exercise the general control and management of affairs, may make necessary by-laws for the corporation and the same from time to time alter or amend. [*Act approved March 8, 1893.*]

CHAPTER VIII.

FOREIGN SURETY COMPANIES.

- Section 4178. *Regulations concerning business in Montana.*
 “ 4179. *Obligations which may be entered into by surety company.*
 “ 4180. *Release of surety.*
 “ 4181. *Trustee secured may deposit moneys with surety.*
 “ 4182. *When company estopped to deny liability.*
 “ 4183. *Failure to comply with regulations.*
 “ 4184. *May withdraw securities on retirement from state.*
 “ 4185. *Depreciation of securities.*
 “ 4186. *Rights of existing corporations.*
 “ 4187. *Unlawful to give bond in company not authorized to do business in the state.*
 “ 4188. *Bonds void.*
 “ 4189. *Penalty.*

4178. *Concerning business in Montana.*—Any Surety Company incorporated under the laws of any State of the United States, other than this State, or under the laws of any Foreign Country, either solely or among other things, for the purpose of transacting business as surety on obligations, bonds or undertakings of persons or corporations, having an authorized capital stock of at least \$250,000, which must be fully paid up, and unimpaired and safely invested in the securities created by the laws of the United States, or by or under the laws of the State where it is incorporated, or in other safe, marketable and interest bearing stock, bonds or other securities, may transact such surety business in this State, upon complying with the provisions of this Act, and not otherwise. Every such Surety Company must, before commencing to do business in this State, comply with the law regulating Foreign Corporations, except that it need not file copies of its charter, statements, or reports in counties other than the one in which is located its office or principal place of business within this State, but every such Surety Company, must, before transacting any business in any county in this State, file in the office of the Clerk and Recorder thereof a certificate of appointment of any agent or attorney in fact representing such company or authorized to execute papers in its behalf, which certificate shall be authenticated in the same manner as provided in Section 4413 (1030) of the Civil Code relating to agents upon whom service may be made, and shall deposit with the Insurance Commissioner, or other corresponding financial officer of the State, in which such corporation is

incorporated and has its principal place of business, in trust for the benefit of the holders of the obligations of such corporations, stocks, bonds or other securities of the par value of \$100,000; and in addition thereto such corporation shall also deposit with the Treasurer of the State \$50,000 of like securities, in trust for the benefit of the resident holders of the obligations of such corporation. Thereupon such surety company may present to the State Auditor proof satisfactory to him that it has complied with this Act and that it is a surety company entitled to do business in this State under the provisions hereof, and upon payment to him of the license fee required of general insurance companies by the laws of this State, he shall issue it a license authorizing it to transact business within this State. The moneys arising from the issuance of such license shall be paid into the State Treasury and disposed of as are other moneys arising from license taxes. No license shall be issued to any such surety company whenever its liabilities shall exceed its assets, and whenever the Auditor shall become satisfied that the liabilities of any surety company, to which license has been issued exceed its assets, he shall send a notice in writing, to the Secretary of such company stating the fact and requiring the deficiency to be paid up within ninety days from the date of such notice, and if it is not so paid up within the time limited, he shall issue a certificate setting forth the amount of such deficiency, and the license of such company is thereby cancelled. The said certificate shall be published in a daily paper printed at the City of Helena once a week for three weeks, and from the date of the first publication of such certificate such company shall be prohibited from doing business within this State. In ascertaining the condition of any such company under the provisions of this Act, the Auditor shall allow as assets only, such as are authorized under existing laws at the time, and shall charge as liabilities, in addition to eighty per cent. of the capital stock, all outstanding indebtedness of the company, and a premium reserve equal to fifty per centum of the premiums charged by said Company on all risks then in force." [Act approved March 11, 1903.] (8th Sess. Chap. 129.)

4179. *Obligation which may be entered into by surety company.*—Whenever any bond, undertaking, recognizance or other obligation is by law, or the charter, ordinance, rules or regulations of any municipality, board, body, organization, or public officer, required or permitted to be made, given, tendered or filed, with surety or sureties, and whenever the performance of any act, duty, or obligation, or the refraining from any act, is required or permitted, to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company qualified to act as surety or guarantor as above pro-

vided, and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every requirement of the law, charter, ordinance, rule or regulation, that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such surety shall be a resident, or householder, or freeholder, or either or both, or possessed of any other qualifications; and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character shall accept and treat accordingly such bond, undertaking, obligation, recognizance or guaranty when so executed by such company, as conforming to and fully and completely complying with every such requirement of every such law, charter, ordinance, rule or regulation. [*Act approved February 24th, 1899, § 2.*] (*5th Sess. 83-4.*)

4180. *Release of surety.*—That from and after the passage of this Act the surety, or the representative of any surety, upon the bond of any trustee, committee, guardian, assignee, receiver, executor or administrator or other fiduciary may apply by petition to the court wherein said bond is directed to be filed or which may have jurisdiction of such trustee, committee, guardian, assignee, receiver, executor or administrator or fiduciary, praying to be relieved from further liability as such surety for the acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator or fiduciary which may occur after the date of the order relieving such surety to be granted as herein provided for and to require such trustees, committee, guardian, assignee, receiver, executor or administrator or fiduciary, to show cause why he should not account and said surety be relieved from such future liability as aforesaid and said principal be required to give a new bond; and thereupon, upon filing of said petition, said court shall issue such order returnable at such time and place and to be served in such manner as said court shall direct and may restrain such trustee, committee, guardian, assignee, receiver, executor or administrator or fiduciary from acting excepting in such manner as it may direct to preserve the trust estate; and upon the return of such order to show cause if the principal in the bond account in due form of law and file a new bond duly approved then said court must make an order releasing said surety filing the petition as aforesaid, from liability upon the bond for any subsequent act or default of the principal; and in default of said principal thus accounting and filing such new bond said court must make an order directing such trustee, committee, guardian, assignee, receiver, executor or administrator or fiduciary, to account in due form of law and that if the trust fund or estate shall be found or made good and paid over or properly secured

such surety shall be discharged from any and all further liability as such for the subsequent acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator or fiduciary after the date of such surety being so relieved or discharged, and discharging such trustee, committee, guardian, assignee, receiver, executor or administrator. [*Acts approved February 24th, 1899, § 3.*] (6th Sess. 84.)

4181. *Trustee secured may deposit moneys with surety.*—That it shall be lawful for any executor, administrator, receiver trustee, curator, or other fiduciary, or party of whom a bond, undertaking or other obligation is required with surety or sureties to agree with the surety or sureties thereupon for the deposit for safe keeping of any and all moneys and other depositable assets for which such surety or sureties may be held responsible, if such deposit is otherwise proper, with a bank, safe deposit or trust company, authorized by law to transact business as such in this State, or other depository approved by the court in which such bond is filed, or a judge thereof, in such manner as to prevent the withdrawal of such moneys and assets or any part thereof, without the written consent of such surety or sureties or an order of such court or judge, made on such notice to such surety or sureties, as such court or judge may direct. [*Act approved February 24th, 1899, § 4.*] (6th Sess. 84-5.)

4182. *When company estopped to deny liability.*—Any company which shall execute any bond or undertaking as surety under the provisions of this Act, shall be estopped, in any proceeding to enforce the liabilities which it shall have assumed to incur, to deny its corporate power to execute such instrument or assume such liability. [*Act approved February 24th, 1899, § 5.*] (6th Sess. 85.)

4183. *Failure to comply with regulations.*—That if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such bond, undertaking, recognizance or other obligation made or guaranteed by it under the provisions of this Act, from which no appeal, writ of error or supersedeas has been taken for ninety days after the rendition of such judgment or decree, it shall be the duty of the Clerk of the Court in which said judgment or decree was rendered to certify a copy thereof to the State Auditor, together with the fact that it remains unpaid; and thereupon the State Auditor must require the State Treasurer to sell as many of the Bonds or other Securities, deposited by such corporation with the State Treasurer as may be necessary for the best price he can obtain and the interest and costs thereon, and to pay to the Clerk of such Court, from the proceeds of such sale, the amount of such judgment or decree, with the interest and costs; and it shall be the

duty of the State Treasurer to sell such bonds or other Securities at private or public sale, with or without notice, or so many as may be necessary, for the best price he can obtain in the market, to assign the same to the purchaser, and to apply the proceeds, or so much thereof as may be necessary to the payment of such judgment or decree, with interest and costs, the surplus, if any, remaining on deposit in lieu of the bonds or other securities so sold. Of such sale the State Auditor must forthwith notify such corporation and require it to supply the deficiency within thirty days; and if such corporation shall fail to do so it shall forfeit all right to do business under this Act, and the State Auditor shall revoke its license. [*Act approved March 11, 1903, § 2.*] (*8th Sess. Chap. 129.*)

4184. *May withdraw securities on retirement from state.*—That when any Corporation doing business under the provisions of this Act ceases to transact such business it may withdraw the securities deposited with the State Treasurer upon satisfying him that it has discharged, or been relieved from, any and all risks and liabilities it has incurred in this State; and upon the State Treasurer becoming satisfied that such Corporation has discharged or been relieved from all such risks and liabilities he shall deliver to such Corporation the securities so deposited by it with him. [*Act approved March 11, 1903, § 3.*] (*8th Sess. Chap. 129.*)

4185. *Depreciation of securities.*—That if at any time the bonds or other securities deposited by such Corporation with the State Treasurer under the provisions of this Act, shall be diminished in amount by sale as hereinbefore provided, or shall depreciate in value, the State Auditor shall require such Corporation to deposit other bonds or other securities of like kind as hereinbefore provided with the State Treasurer, so that the amount and value of such bonds or other securities in the hands of the State Treasurer shall, at all times, be \$50,000. For all bonds and securities deposited by all such Corporations under the provisions of this Act, the faith and credit of the State are hereby pledged, that the said bonds and securities shall be returned to the parties entitled to receive them, or disposed of as provided in this Act. [*Act approved March 11, 1903, § 4.*] (*8th Sess. Chap. 129.*)

4186. *Rights of existing corporations.*—All such Corporations now engaged in transacting such security business in this State, may continue to engage in such business upon complying with the provisions of this Act relative to the making of such deposit of securities, within ninety days after the date of the taking effect of this Act. [*Act approved March 11, 1903, § 5.*] (*8th Sess. Chap. 129.*)

4187. *Unlawful to give bond in company not authorized to do business in state.*—It shall hereafter be unlawful for any person, association or corporation, foreign or domestic, to require any person in his or its employ to make or execute, or to procure to be made or executed, any bond or undertaking for the faithful discharge of his duties, or upon any other consideration, with any corporation not organized under the laws of the State of Montana as surety thereon, unless said corporation shall first have complied with the laws of the State of Montana authorizing it to transact business therein. [Act approved February 9, 1905, § 1.] (9th Sess. Chap. 11.)

4188. *Bonds void.*—All bonds and undertakings entered into by any citizen or resident of the state of Montana, with any such organization as surety, touching or affecting any services to be rendered or acts to be performed in the State of Montana, in whole or in part, unless such corporation shall first have complied with the laws of the State of Montana, shall be void. [Act approved February 9, 1905, § 2.] (9th Sess. Chap. 11.)

4189. *Penalty.*—Any person, association or corporation which shall exact or require of any person, or make it a condition of employment or the retention of employment, that he make or execute any bond or undertaking with any such corporation, having so failed to comply with the laws of the State of Montana entitling it to transact business therein, as surety thereon, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than One Hundred (\$100.00) Dollars and not more than One Thousand (\$1000.00) Dollars. [Act approved February 9, 1905, § 3.] (9th Sess. Chap. 11.)

TITLE IV.

BUILDING AND LOAN ASSOCIATIONS.

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| Section | 4190. | <i>Organization of association.</i> |
| " | 4191. | <i>How incorporated.</i> |
| " | 4192. | <i>Capital stock, directors.</i> |
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Section, 4204. Powers of state examiner.

“ 4205. *Publication of condition.*

“ 4206. *Fees paid into state treasury.*

“ 4207. *Liability of state treasurer.*

“ 4208. *Penalties.*

“ 4209. *State examiner. Report.*

4190. *Organization of association.*—That a corporation for the purpose of raising money to be loaned among its members shall be known, in this Act, as a “Building and Loan Association.” Such associations shall be organized under the laws of this state relating to corporations, and shall be conducted under the banking laws of Montana, so far as applicable, except as otherwise provided in this Act. [*Act approved March 5, 1907.*] (*10th Sess. Chap. 104.*)

4191. *How incorporated.*—Any Building and Loan Association heretofore organized and existing under and by virtue of the laws of the State of Montana, may be incorporated under the provisions of this act, by calling a meeting of its stockholders upon notice published in a paper having a general circulation in the county, in which the general office of the company is located, and by mailing a notice of such meeting to the last known address of its stockholders ten days previous to such meeting. Should a majority of the stock vote to become incorporated under this act, the president and secretary shall file a certificate of the vote with the Secretary of State, and such companies shall thereafter act, and be incorporated under this act. The validity of its securities and contracts shall in no wise be affected by its reformation as provided in this section. [*Act approved March 1st, 1897, § 2.*] (*5th Sess. 232.*)

Home L. Assn. v. Nolan, 21 Mont. 205; 53 Pac. 738.

4192. *Capital stock. Directors.*—The capital stock named in the articles of incorporation, shall be deemed to refer to the authorized capital, and the organization may be completed and business commenced when five per cent thereof is subscribed. Directors may be elected for any term not less than one year nor longer than three years, but if such term be longer than one year, it shall be so arranged that the term of office of an equal number of directors, as nearly as may be, will expire each year. [*Act approved March 1st, 1897, § 3.*] (*5th Sess. 232.*)

4193. *Powers of corporations.*—Such corporation shall have power to issue stock to members on such terms and conditions as the Constitution and By-Laws may provide. To assess and collect from members and depositors such dues, fines, interest and premium on loans made, or other assessments as may be provided for in the Constitution and By-Laws. Such dues, fines, premiums or other assessments shall not be deemed usury although in excess

of the legal rate of interest. To permit members to withdraw all or part of their stock deposits at such time and upon such terms as the Constitution and By-Laws may provide; *Provided*, that no charge or fee shall be made against any member who withdraws his stock after having given thirty days' notice of such withdrawal. *Provided also*, that no fine of any description shall be made upon the par value of such stock, or upon the declared dividends, because of such withdrawal. Any member who withdraws his stock or whose stock is matured, shall be entitled to receive all dues paid in and all dividends declared, less fines imposed for non-payment of dues and less a pro rata share of all losses, if any have occurred, and no other fine or assessment shall be made against such stock, *provided*, that any member who withdraws, within sixty days, shall be entitled to receive the full amount paid in, less ten per cent. and any sum which he may have received from the company. To cancel shares of stock upon which all payments have been withdrawn, or upon which loans have been cancelled and re-issue them as new stock. To issue stock to minors and permit the same to be withdrawn as other stock and the receipt of such minor shall be a valid acquittance if his rights have been fully secured to him. To acquire, hold, incumber and convey such real estate and personal property as may be necessary for the transactions of its business or necessary to enforce or protect its securities. To borrow money not exceeding twenty per cent of its assets and issue its evidence of indebtedness therefor. To make loans to members and depositors on such terms, conditions and securities as may be provided in the Constitution and By-laws. To cancel such loans and release the securities on such terms as the board of directors may provide. But any may have his loan cancelled upon the following terms, to-wit: After the premium for one year has been paid, and also the premium and interest up to the date of cancellation, the borrower shall pay the sum actually borrowed, less the dues paid and the dividends credited. He shall pay also any fines or other assessments required by the Constitution and By-laws. To invest the money of the association in city, county or State warrants and bonds. To loan money to other Building and Loan Associations. To accumulate from the earnings and invest as the Board of Directors may determine a reserve fund for the payment of contingent losses. To make such annual or semi-annual distribution of the earnings (after paying expenses and setting aside a sum for the reserve fund as hereinafter provided), as the Constitution and By-laws may prescribe. To increase or decrease its authorized capital or the face value of its shares at any time by a majority vote of its directors, and a certificate of such action shall be made by the president and secretary and

duly filed with the Secretary of State. To dissolve the corporation when its continuance shall be deemed by a majority of its members to be no longer desirable, subject, however to the vested rights of its members. To provide by constitution adopted by its Board of Directors, for the proper exercise of the powers herein granted and the conduct and management of its affairs. All such other powers as are necessary and proper to enable such corporation to carry out the purpose of its organization. [*Act approved March 3rd, 1899, § 1.*] (6th Sess. 121-123.)

4194. *Rights of withdrawing members.*—Withdrawing members and depositors shall be entitled to all the receipts of the association, except what is necessary for the payment of expenses and outstanding contracts as fast as collections are made, in the order in which the application for withdrawals are registered on the books of the association, and shall be entitled to be paid as fast as collections are made by the association, and in no other way. [*Act approved March 1st, 1897, § 5.*] (5th Sess. Chap. 234.)

4195. *Bonds of officers.*—All officers of such association who have charge or possession of money, securities or property, shall give bond before entering upon their duties to the satisfaction of the board of directors and the State Examiner for the faithful performance of the same, and the safe keeping and proper application of all moneys or property coming into their hands. All officers of such corporations on being re-elected to office shall renew their bonds. The bond may be increased or additional sureties required at any time by the board of directors. Directors shall not be eligible as bondsmen. [*Act approved March 1st, 1897, § 6.*] (5th Sess. 234.)

4196. *Fund for contingent losses.*—The amount to be set aside to the fund for contingent losses shall be determined by the board of directors, but in all permanent or serial associations at least five per cent of the net earnings shall be set aside each year for such fund until it reaches at least five per cent of the outstanding loans. All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in said fund falls below five per cent of the loans as aforesaid, it shall be replenished by annual appropriations of at least five per cent of the net earnings as hereinbefore provided until it again reaches said amount. [*Act approved March 1st, 1897, § 7.*] (5th Sess. 234.)

4197. *Payment of expenses and losses.*—All expenses of any such association shall be paid in such manner as may be determined by the vote of the owners of the majority of the stock in force in any such association and indicated in its by-laws. *Provided:* That after an association has been organized for two

years, the expenses must be paid out of the earnings only. The charges incident to a loan if paid by the borrower, shall not be deemed a part of the current expenses. A portion of the earnings to be determined by the board of directors, shall also be reserved annually or semi-annually, for the payment of contingent losses as provided in § 4196 (7) of this Act, and the residue of such earnings shall be transferred as a dividend annually or semi-annually in such proportion to the credit of all members as the corporation by its constitution and by-laws may provide, to be paid to them at such time and in such manner in conformity with this act as the corporation by its constitution and by-laws may provide. All losses shall be assessed in the same proportion and manner on all members after the amount in the reserve fund has been applied to the payment of the same. [*Act approved March 1st, 1897, § 8.*] (5th Sess. 234-5.)

4198. *Taxation of property.*—Every such association shall be assessed for, and pay taxes upon office furniture and fixtures and all real estate acquired in the course of its business. The amount standing to the credit of each member of any such association upon its books to be considered and held as the individual credit of such member, and each member shall list the shares held by him for taxation at their real value in money in the county of his residence, the same as other credits are listed, except shares from which loans have been made or money advanced by the association, and such shares shall be listed for taxation at the net cash value of the stock to be ascertained by deducting the loan from the cash value of the shares. Corporations organized under this act shall be subject to taxation in no other way. All foreign and domestic associations authorized to do business in this state shall by the first day of March of each year deliver or cause to be delivered to the county assessor of the several counties wherein their stockholders may reside a list of such stockholders, together with the actual money value of the stock held by such stockholders, and as a penalty for the failure of any such association to comply with this section they shall forfeit and pay to the State the sum of five hundred dollars. [*Act approved March 1st, 1897, § 9.*] (5th Sess. Chap. 235.)

4199. *Collaterals held as security.*—The deposit made with the State Treasurer shall be held as security for all claims of residents of this State against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same in the same manner as the property of other non-residents. Should any association cease to do business in this State, the State Treasurer may release sureties in his discretion, retaining sufficient to satisfy all outstanding

liabilities and value of stock held by residents of the State of Montana. [*Act approved March 1st, 1897, § 14.*] (*5th Sess. Chap. 237.*)

4200. *Annual statements.*—Every Building and Loan Association doing business in this State shall, annually at the end of each fiscal year, or within forty days thereafter, make a full detailed report in writing of the affairs and business of the association for the preceding year, and showing its financial condition at the end of said fiscal year. With the first report made by any association it shall also file a certified copy of its constitution and by-laws or other rules and regulations, showing its manner of doing business. [*Act approved March 1st, 1897, § 15.*] (*5th Sess. 237.*)

4201. *Form of statement.*—The statement shall be in such form and contain such information as may be prescribed by the State Examiner. It shall be sworn to by the secretary of such company and its correctness attested by at least three directors or an auditing committee appointed by the Board of Trustees. The original shall be filed with the State Examiner within forty days after the close of its fiscal year, and such an abstract thereof as the State Examiner may require shall be posted for sixty days in the office or meeting place of such association and also published three times consecutively in the paper which does the county printing of the county in which said association is located. [*Act approved March 1st, 1897, § 16.*] (*5th Sess. 237.*)

4202. *Duties of State Examiner.*—The state examiner shall examine all building and loan associations doing business in this state, at least, once a year. Also, whenever ten per cent of the subscribed stock of any association files a written application with the state examiner, requesting him to make examination of any association, he shall make such examination forthwith. [*Act approved March 5, 1907.*] (*10th Sess. Chap. 104.*)

4203. *Same.*—Should the State Examiner, upon examination, find any domestic association conducting its business in whole or in part contrary to law, or failing to comply with the law, he shall so notify the board of directors of such association in writing, and if after thirty days, such illegal practices, or failure continues, he shall communicate the facts to the Attorney General, who shall cause proceedings to be instituted in the proper court to revoke the charter of such association. Should the State Examiner find upon examination that the affairs of any such association are in an unsound condition, and that the interests of the public demand the dissolution of such association and the winding up of affairs, he shall so report to the Attorney General

who shall institute the proper proceedings for that purpose. [*Act approved March 1st, 1897, § 18.*] (5th Sess. 238.)

4204. *Powers of State examiner.*—Such State examiner shall have access to and may compel the production of all books, papers, securities and moneys, of the association under examination. He shall have power to administer oaths to and examine the officers and agents of such association and its affairs. [*Act approved March 1st, 1897, § 19.*] (5th Sess. 238.)

4205. *Publication of condition.*—When the State Examiner deems it to be to the interests of the public, he may publish the results of such examination in some newspaper of general circulation in the county in which such association is located, if it be a domestic association, and in some newspaper in the City of Helena, Montana, if it be a foreign corporation. The expenses of such publication shall be paid by the association whose statement is published. [*Act approved March 1st, 1897, § 20.*] (5th Sess. 238.)

4206. *Fees paid into State Treasury.*—All fees provided for in this Act and paid to the State Auditor, State Examiner, or Secretary of State, shall be by them turned into the State Treasurer. [*Act approved March 1st, 1897, § 23.*] (5th Sess. 239.)

4207. *Liability of State Treasurer.*—The State Treasurer and sureties shall be responsible for the safe keeping of all securities or cash deposited with him in compliance with the provisions of this Act. [*Act approved March 1st, 1897, § 24.*] (5th Sess. 239.)

4208. *Penalties.*—It shall be unlawful for any building and loan association, or other person, association or corporation doing a similar business, to do business in this state without having first complied with the provisions of this Act, and received a certificate of authority to do business from the state examiner, and any association violating any of the provisions of this Act, or failing to comply with any of its provisions, shall be fined not less than fifty nor more than one thousand dollars, to be recovered by an action in the name of the state, and, on collection, paid into the state treasury, and any officer, employee, or other person who solicits business for, aids or assists any building and loan association to do business contrary to the provisions of this Act, or without having complied with the provisions, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred (\$500.00) dollars or imprisoned not more than six months, or both. Such fine, when collected, to be paid into the state treasury. [*Act approved March 5, 1907, (10th Sess. Chap. 104.)*]

4209. *State Examiner. Report.*—The State Examiner shall keep and preserve in permanent form a full record of his proceedings, including a concise statement of each association examined, and he shall annually make a report of the general conduct and condition of the building and loan associations doing business in this State, with such suggestions as he may deem expedient. Such report shall also include the information contained in the statement required of the association and arranged in tabulated form. He shall also report the whole amount of the income of his office, the source whence derived and the expenses, in detail, during the year ending on the 30th day of November. [*Act approved March 1st, 1897, § 26.*] (5th Sess. 240.)

TITLE V.

CO-OPERATIVE ASSOCIATIONS.

- Section 4210. *Incorporation.*
- “ 4211. *Stockholders.*
- “ 4212. *First meeting.*
- “ 4213. *Certificate of incorporation.*
- “ 4214. *Powers.*
- “ 4215. *Board of directors.*
- “ 4216. *Stock.*
- “ 4217. *Assignment of stock.*
- “ 4218. *Stock exempt from execution.*
- “ 4219. *Increase of membership.*
- “ 4220. *Limitations.*

4210. (§ 870.) *Incorporation.*—That whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a co-operative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of five dollars. [*Act approved March 6, 1895.*]

4211. (§ 871.) *Stockholders.*—No person shall be permitted to subscribe for or control or own, more nor less than one share of the capital stock of such association. [*Act approved March 6, 1895.*]

4212. (§ 872.) *First meeting.*—As soon as ten or more shares of the capital stock shall be subscribed the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting by-laws and transacting such other business as shall properly come before them. Notice thereof shall be given by depositing in the postoffice, properly addressed, to each subscriber, at least ten days before the time fixed, stating the object, time and place of said meeting. Directors of associations organized under this act shall be elected by the stockholders and hold their office for such period of time as shall be provided in the articles of association or by-laws. [*Act approved March 6, 1895.*]

4213. (§ 873.) *Certificate of incorporation.*—The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and the seal of the state, for which he shall receive the sum of five dollars, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy the association shall be deemed to be fully organized and may proceed to business. [*Act approved March 6, 1895.*]

4214. (§ 874.) *Powers.*—Associations formed under this act shall be bodies corporate and politic for the period for which they are organized, not exceeding forty years; may sue and be sued; may have a common seal, which they may alter or renew at pleasure; may own, possess and enjoy so much real and personal property as shall be necessary for the transaction of their business, and may sell and dispose of the same. They may borrow money and may pledge their property, both real and personal, to secure the payment thereof, and they shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed, and such as are usually exercised by co-operative associations, subject to all duties, restrictions and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this act. [*Act approved March 6, 1895.*]

4215. (§ 875.) *Board of directors.*—The officers of the association shall consist of a board of directors, who shall exercise the corporate powers invested in such association; the number of which, not less than three, shall be fixed by the by-laws of the association; a president, vice-president, secretary and treasurer, to be elected by the stockholders as provided by the by-laws. All by-laws shall be adopted by the stockholders of the association. [*Act approved March 6, 1895.*]

4216. (§ 876.) *Stock.*—The share of stock shall not be less than ten dollars nor more than five hundred dollars per share, and may be made payable in installments. Forfeiture of the stock for the non-payment of installments may be provided for in the by-laws, and whenever a share of stock is forfeited such share shall become the property of the association, and may be re-issued to any person not already holding a share; but any proceeds received from such re-issue, over and above the amount due on said share, by the association, shall be paid to the delinquent shareholder. [*Act approved March 6, 1895.*]

4217. (§ 877.) *Assignment of stock.*—No assignment of stock shall be made to any person who already owns a share, and in no event except by the consent of a majority of the stockholders, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share, but shall remain jointly liable therefor with the assignee. [*Act approved March 6, 1895.*]

4218. (§ 878.) *Stock exempt from execution.*—The share of each member shall be exempt from seizure on attachment, or sale under execution, and upon his death shall be sold by the association, and the proceeds, after deducting all liabilities to the association, shall be delivered to his heirs. [*Act approved March 6, 1895.*]

4219. (§ 879.) *Increase of membership.*—An association licensed to operate under this act, may, by a majority of its stockholders, increase its membership in such manner as may be provided in its by-laws, not inconsistent with any of the provisions of this act. [*Act approved March 6, 1895.*]

4220. (§ 880.) *Limitations.*—The legislative assembly hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under

this act as it may deem advisable; and such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made as well as on those thereafter incorporated. [*Act approved March 6, 1895.*]

TITLE VI.

EDUCATIONAL, RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

CHAPTER I. COLLEGES AND SEMINARIES OF LEARNING.

II. RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

III. RELIGIOUS CORPORATIONS SOLE.

CHAPTER I.

COLLEGES AND SEMINARIES OF LEARNING.

Section 4221. How incorporated.

“ 4222. *What articles of incorporation must contain.*

“ 4223. *Powers of trustees.*

4221. (§ 750.) *How incorporated.*—Any number of persons who desire to establish a college or seminary of learning may incorporate themselves as provided in this part.

4222. (§ 751.) *What articles of incorporation must contain.*—In lieu of the requirements of § 3818 (403) the articles of incorporation must contain:

1. The name of the corporation.
2. The purposes for which it was organized
3. The place where the college or seminary is to be conducted.
4. The number of its trustees, which shall not be less than three nor more than thirteen, and the names and residences of the trustees. The term for which the trustees named and their successors are to hold office may also be stated. If it is desired the trustees or any portion of them shall belong to any organization, society or church, such limitation shall be stated.

5. The names of those who have subscribed money or property to assist in founding the seminary or college, together with the amount of money and description of property subscribed.

4223. (§ 752.) *Powers of trustees.*—Unless otherwise provided in the articles of incorporation, the board of trustees must, as soon as organized, so classify themselves that one-third of their number, as near as possible, must go out of office every year, and thereafter the trustees shall hold office for three years. A majority of the trustees constitute a quorum for the transaction of business, and the office of the corporation must be at the college or seminary.

The trustees have power:

1. To elect, by ballot, annually one of their number as president, and another as secretary, also any person as treasurer, of the board.

2. Upon the death, removal out of the state, or other vacancy in the office, or expiration of the term of any trustee, to elect another in his place. If such corporation is formed under the patronage or authority of a church organization the trustees may be elected by the presbytery, conference, convocation or other ruling body of such church. If formed by a society, then by the members of the society.

3. To elect additional trustees; *Provided*, The whole number elected does never exceed thirteen at any one time.

4. To declare vacant the seat of any trustee who absents himself from eight successive meetings of the board.

5. To receive and hold by purchase, gift, devise, bequest or grant, real estate or personal property, for educational purposes connected with the corporation, or for the benefit of the institution.

6. To sell, mortgage, lease, contract and otherwise use and dispose of the property of the corporation in such manner as they shall deem conducive to the prosperity of the corporation.

7. To direct and prescribe the course of study and discipline to be observed in the college or seminary.

8. To appoint a president of the college or seminary, who shall hold his office during the pleasure of the trustees.

9. To appoint such professors, tutors, and other officers as they shall deem necessary, who shall hold their offices during the pleasure of the trustees.

10. To grant such literary honors as are usually granted by any university, college, or seminary of learning in the United States, and in testimony thereof to give suitable diplomas under their seal, and signature of such officers of the corporation and the institution as they may deem expedient.

11. To fix salaries of the president, professors, and other officers and employes of the college or seminary.

12. To make all by-laws and ordinances necessary and proper to carry into effect the preceding powers and necessary to advance the interests of the college or seminary; *Provided*, That no by-law or ordinance shall conflict with the constitution or laws of the United States or of this state.

CHAPTER II.

RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

Section 4224. Churches, charities and fraternal societies.

“ 4225. *Resolution to become incorporate.*

“ 4226. *Articles of incorporation. Powers of corporations.*

“ 4227. *By-laws.*

“ 4228. *Incorporation of church or religious societies.*

“ 4229. *Power to mortgage or sell property.*

4224. *Churches, charities, and fraternal societies.*—Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stockgrowers associations, and other associations of like character, including local, independent and subordinate organizations as well as state, respective, supervisory, governing and grand organizations and bodies, of any such associations society of order may become incorporated upon complying with the provisions of this Title. [Act approved March 8th, 1903, § 1.] (8th Sess. Chap. 70.)

4225. *Resolution to become incorporate.*—It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved, That the Trustees of this (Church, synod, presbytery, conference, assembly, lodge, grand lodge or other association, as the case may be, to-wit: (A. B., C. D., Etc., giving the name of the duly elected Trustees or Directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The Trustees or Directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. [Act approved March 8th, 1903.] (8th Sess. Chap. 70.)

4226. *Articles of incorporation. Powers of corporation.*—The Trustees or Directors of whom there must be not less than three and not more than thirteen, named in such resolution may thereupon make, file and record in the office of the County Clerk

and Recorder of the County, where such association is located, if such association be a local or subordinate association, or in the office of the Secretary of State, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to such articles a copy of the resolution provided for in Section 4225 (861) certified to by the President or other presiding officer and the Secretary or other recording officer of such meeting. In lieu of the requirements of Section 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the Corporation.
2. The purpose for which it is organized.
3. The number of Trustees or Directors for the first year of the corporate existence of such corporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt, by-laws not inconsistent with laws and enforce the same by appropriate penalties; have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate and may use and dispose thereof only for the purposes for which the corporation is organized. [*Act approved March 8th, 1903.*] (8th Sess. Chap. 70.)

4227. *By-laws.*—Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Section 4226 (862) of this Code, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.
2. The fees of admission and dues to be paid into their Treasury by members.
3. The number of members that constitutes a quorum at any meeting of the Corporation, and an election of officers of the Corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.

4. The expulsion and suspension of members for misconduct or non payment of dues; also for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness,

6. Other regulations, not repugnant to the constitution provided for in Section 4225 (861), certified to by the President or other presiding officer and the Secretary. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 70.)

4228. *Incorporation of church or religious societies*—The representative body of any church or religious society in this state, such as conference, synod, convocation, convention, or the like,

may elect not less than three of its members of such church or religious society, as trustees with authority to form a corporation for holding and administering all trust funds for general or special purposes, or for holding the legal title to real estate for use and in trust for the said church or society, or any congregation or parish thereof, and for conducting and transacting the business affairs of such church or religious society, or any congregation or parish thereof; and any church or religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for this purpose. Such persons so appointed as trustees must, thereupon, make, execute, acknowledge and file articles of incorporation in the office of the county clerk and recorder of the county wherein such business is to be transacted, and a certified copy thereof in the office of the secretary of the state of Montana. Such articles may contain the statements set forth in Section 4226 (862) of this Chapter, as amended. There must be attached to the articles of incorporation a transcript of the record of their election as such trustees, certified to by the presiding and recording officer of the body by which they are elected, and, thereupon, such persons and their successors in office shall become a body politic and corporate, and shall have and exercise the powers set forth in Sections 4226 (862) and 4227 (863) of this Chapter, as amended by the Act approved March 15, 1903, and such corporation may, also, in its by-laws or articles of incorporation provide for the number, name or designation of its officers, their qualifications, duties, terms of office, and manner and time of election or appointment. [Act approved March 5, 1907.] (10th Sess. Chap. 105.)

4229. (§ 865.) *Power to mortgage or sell property.*—Corporations of this character mentioned in this title heretofore organized or that may be hereafter organized may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws or resolutions. [Act approved March 5th, 1903.] (8th Sess. Chap. 70.)

CHAPTER III.

RELIGIOUS CORPORATIONS SOLE.

- Section 4230. *When corporations sole may be created.*
 “ 4231. *Articles of incorporation.*
 “ 4232. *Certificate of incorporation.*
 “ 4233. *Powers of corporation sole.*
 “ 4234. *Succession.*
 “ 4235. *Amendment of articles.*
 “ 4236. *Certificate of amended articles.*

4230. *When corporations sole may be created.*—Whenever the rules, regulating or discipline, of any religious denomination, society, or church, permit or require the estate, property, temporalities, and business thereof, to be held in the name of, or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest or presiding elder, of such religious denomination, society, or church, to become a sole corporation in the manner herein prescribed. [Act approved February 27th, 1899, § 1.] (6th Sess. 105-106.)

4231. *Articles of incorporation.*—Such bishop, chief priest, or presiding elder, shall file in the office of the Secretary of State articles of incorporation, which articles shall set forth the name of such religious denomination, society or church, and the name of such sole corporations, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, chief priest or presiding elder, as required by the rules, regulations, or discipline, of such religious denomination, society or church, shall be filled, which statement shall be verified by affidavit; and he shall also file proof of his appointment or election as such bishop, chief priest, or presiding elder, and for proof of the appointment or election of such bishop, chief priest or presiding elder, or of any succeeding incumbent of such corporation, it shall be sufficient to record in the office of the Secretary of State the original, or a copy of his commission, or certificate, or letters of election or appointment duly attested. [Act approved February 27th, 1899, § 2.] (6th Sess. 106.)

4232. *Certificate of incorporation.*—Upon filing the articles of incorporation in the office of the Secretary of State, with the proof of the appointment, or election, of such bishop, chief priest, or presiding elder, the Secretary must issue to the corporation, over the great seal of the State, a certificate that the articles of incorporation, containing the required statement of facts, and the proof of the appointment or election of such bishop, chief priest, or presiding elder, has been filed in his office, and thereupon such bishop, chief priest, or presiding elder, shall become, and he and his successors in office shall be a sole corporation. [Act approved February 27th, 1899, § 3.] (6th Sess. 106.)

4233. *Powers of corporation sole.*—Every sole corporation, organized under the provisions of this Act, for the purpose of the trust hereinafter mentioned, shall have power to contract in the same manner, and to the same extent, as a natural person, and may sue and be sued, and may defend in all courts, in all matters and proceedings whatever, and shall have authority to borrow money, and to give promissory notes therefor, and to secure the payment thereof by mortgage, or other lien, upon property

real or personal, to buy, sell, lease, and in every way deal in real or personal property, in the same manner that a natural person may, for the use, purpose, benefit and behoof of such religious denomination, society, or church, and without the order of any court; and to receive bequests and devises for its own use, or upon trust, and to the same extent that a natural person may, and to appoint attorneys in fact and to adopt and use a corporate seal. *Provided, however,* that all property held by, or in the name of such sole corporation, shall be in trust for the use, purpose, benefit and behoof of such religious denomination, society, or church for which, and in whose behalf, such sole corporation is organized. [Act approved February 27th, 1899, § 4.] (6th Sess. Chap. 106-107.)

4234. *Succession.*—In the event of the death or resignation from office of any such Bishop, Chief Priest, or Presiding Elder, or of his removal therefrom by the person or body having the authority to remove him, his successor in office shall be vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the County Clerk and Recorder of each County wherein any of said property is situated a certified copy of the proof of his appointment or election, required by § 4333 (4), to be filed with the Secretary of State, accompanied by an instrument in writing containing a description of the property situated in such County, and a declaration that the same is owned and held by him by virtue of his succession to said office, which declaration shall be signed and acknowledged by him before some officer authorized to take acknowledgments. Said certificate and statement shall constitute a muniment of title to said property and the same or a copy thereof duly certified by the Clerk and Recorder of the County wherein the same is filed shall be competent evidence thereof in any action or proceeding concerning the same. [Act approved February 27th, 1899, § 5.] (107.)

4235. *Amendment of articles.*—Whenever any Bishop, Chief Priest or Presiding Elder, shall have filed in the office of the Secretary of State Articles of Incorporation, under the provisions of an Act Entitled, "An Act authorizing and regulating the incorporation of sole corporations and defining their powers," approved February 27th, 1899, and there shall be any change made in the boundaries of the territory over which he, or his successor, presides, or over which his or his successor's jurisdiction extends, or, whenever, for other reasons, it is deemed necessary, such Bishop, Chief Priest or Presiding Elder, or his successor in office, may file in the office of the Secretary of State amended Articles of Incorporation, which articles shall set forth the date of filing the original Articles of Incorporation, the name of such

religious denomination, society or church, and the name of such sole corporation, and designate the territory over which he presides, or over which his jurisdiction extends, and the facts authorizing such Incorporation, and declare the manner in which any vacancy, occurring in the incumbency of such Bishop, Chief Priest, or Presiding Elder, as required by the rules and regulations, or discipline of such religious denomination, society or church, shall be filed, and shall also file the original, or a copy, or translation of his commission, certificate or letter of appointment as such Bishop, Chief Priest, or Presiding Elder, duly attested, and his affidavit that the same is a true copy or translation, shall be deemed a sufficient attestation thereof. [*Act approved March 2, 1905, § 1.*] (9th Sess. Chap. 65.)

4236. *Certificate of amended articles.*—Upon filing the amended Articles of Incorporation in the office of the Secretary of State, with the certificate or copy of appointment, mentioned in § 4235 (1) of this Act, the Secretary shall issue to such corporation, over the Great Seal of the State, an amended certificate of Incorporation, setting forth therein the date of filing the original articles, and the date of filing the amended articles of incorporation, and that said amended articles of incorporation, containing the required statement of facts, and proof of the appointment or election of such Bishop, Chief Priest, or Presiding Elder, as provided in § 4235 (1) of this Act, have been filed in his office. And the said Bishop, Chief Priest, or Presiding Elder shall continue to be, and be, and his successor in office, shall be a Sole Corporation, under the original articles, and amended articles of incorporation filed. [*Act approved March 2, 1905, § 2.*] (9th Sess. Chap. 65.)

TITLE VII.

CEMETERY ASSOCIATIONS.

- Section 4237. Formation of association. Trustees.*
- “ 4238. *Classification of trustees.*
- “ 4239. *Articles of incorporation.*
- “ 4240. *Powers of corporation.*
- “ 4241. *Trustees may enact by-laws.*
- “ 4242. *Vacancies in membership.*
- “ 4243. *Powers and duties of trustees. Officers.*
- “ 4244. *Secretary.*
- “ 4245. *Register of interments.*
- “ 4246. *Penalty.*
- “ 4247. *Who may take lands by purchase or gift.*
- “ 4248. *Conveyance of land.*
- “ 4249. *Annual election.*
- “ 4250. *Qualification of trustees. Notice of election.*

- Section 4251. Trustees may fix day for election.*
 “ 4252. *Annual report.*
 “ 4253. *Funds.*
 “ 4254. *Exemption from taxation.*
 “ 4255. *Transfer of lots.*
 “ 4256. *Permanent improvement fund.*
 “ 4257. *Trustees of fund.*
 “ 4258. *Tenure of office.*
 “ 4259. *Bond of trustees.*
 “ 4260. *Vacancies in board.*
 “ 4261. *Powers of survivors.*
 “ 4262. *Powers of district court.*
 “ 4263. *Records.*
 “ 4264. *Transfer of funds.*
 “ 4265. *Principal of fund to be reserved.*
 “ 4266. *Disposition of income.*
 “ 4267. *Investment of fund.*
 “ 4268. *Compensation of trustees.*
 “ 4269. *Secretary of board.*
 “ 4270. *Annual report.*

4237. *Formation of association. Trustees.*—Any number of persons residing in any county in the State of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they, or a majority of them agree upon, and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting, and may proceed to form an association, by agreeing upon a corporate name by which the association shall be known, and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three, or more than nine; and thereupon they may proceed to elect by ballot the number of trustees so determined upon. [Act approved February 16, 1905, § 1.] (9th Sess. Chap. 18.)

4238. *Classification of trustees.*—The Chairman and Secretary of such meeting shall, immediately after such election, divide the trustees by lot into three classes; those in the first class to hold their office for one year; those in the second class, two years, and those in the third class, three years; but the trustees of each class may be re-elected if they possess the qualifications hereinafter mentioned; such meeting shall also determine on what day in each year the future annual election of trustees shall be held. [Act approved February 16, 1905, § 2.] (9th Sess. Chap. 18.)

4239. *Articles of incorporation.*—The chairman and secretary of such meeting shall, within five days after the holding of the same, make a written certificate, which shall state the names of

the associates who attended such meeting, the corporate name of the association determined upon by a majority of the persons who met, the number of persons fixed upon to manage the concerns of the association, the names of the trustees chosen at the meeting and their classification, the day of the year fixed upon for the annual election of trustees, and the manner of their election; such certificate shall be signed by the said chairman and secretary, and acknowledged by them before some person authorized to take acknowledgments within the State of Montana, and they shall cause such certificate so acknowledged, to be recorded in the office of the County Clerk & Recorder of the County in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the Secretary of State of the State of Montana, who shall thereupon issue his certificate therefor without charge. [*Act approved February 16, 1905, § 3.*] (*9th Sess. Chap. 18.*)

4240. *Powers of corporation.*—Whenever such certificate is duly acknowledged and recorded, and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges of corporations, with the right to sue and be sued and to continue perpetually. [*Act approved February 16, 1905, § 4.*] (*9th Sess. Chap. 18.*)

4241. *Trustees may enact by-laws.*—The trustees of any association incorporated agreeably to the provisions of this act, may enact by-laws for regulating the affairs of such corporation, not inconsistent with the laws of this state. [*Act approved February 16, 1905, § 5.*] (*9th Sess. Chap. 18.*)

4242. *Vacancies in membership.*—That all vacancies occurring by death or otherwise in the membership of any cemetery association organized under this act, shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees, and be eligible to the office of trustee of said incorporation, and shall have and be entitled to the same rights, powers and privileges as the original associates named in said certificate. [*Act approved February 16, 1905, § 6.*] (*9th Sess. Chap. 18.*)

4243. *Powers and duties of trustees. Officers.*—The affairs and property of such association shall be managed by the trustees, a majority of whom shall form a board for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary and treasurer, who shall hold their offices during the pleasure of the board of trustees; and the trustees may require the treasurer to give security for the faithful performance of the duties of his office. [*Act approved February 16, 1905, § 7.*] (*9th Sess. Chap. 18.*)

4244. *Secretary*.—The Secretary shall perform all the duties of a secretary of a corporation, and shall in addition keep a record of interments, in which he shall enter as correctly and carefully as may be, the name, age, sex, nativity and cause of death, with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased, or undertaker, as give order for such interment, at the time thereof, or, in case deceased is a pauper, a stranger or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same. [*Act approved February 16, 1905, § 8.*] (9th Sess. Chap. 18.)

4245. *Register of interments*.—Such register or record of interment shall be open to the inspection of the public; and the secretary of every cemetery association shall furnish to the health officers of any corporate town, or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year. [*Act approved February 16, 1905, § 9.*] (9th Sess. Chap. 18.)

4246. *Penalty*.—Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein as herein provided, shall be subject to a fine for such offense, not exceeding twenty-five (25) Dollars. [*Act approved February 16, 1905, § 10.*] (9th Sess. Chap. 18.)

4247. *May take land by purchase or gift*.—Any association incorporated agreeably to the provisions of this act, may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding one hundred and sixty acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees may direct, with such avenues, alleys and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the office of the County Clerk and Recorder of the county in which the lands lie without any fees therefor. Such association may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance and embellishment of said cemetery, but for no other purpose, and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order or the embellishment of any lot or ground situated within the enclosure of such an association, shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor. [*Act approved February 16, 1905, § 11.*] (9th Sess. Chap. 18.)

4248. *Conveyance of land.*—After such map is filed in the office of the County Clerk and Recorder, as aforesaid, the trustees may sell and convey the lots as designated on such map, upon terms, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the said trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other, and shall be in the corporate name of the association, signed by the president and secretary thereof. [Act approved February 16, 1905, § 12.] (9th Sess. Chap. 18.)

4249. *Annual election.*—The annual election for trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees direct. The Trustees chosen at any election after the first shall hold their offices for three years, and until others are chosen to succeed them; such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association, or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot, or any person who is named as an associate in said certificate, may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees. [Act approved February 16, 1905, § 13.] (9th Sess. Chap. 18.)

4250. *Qualification of trustees. Notice of election.*—In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation, or their successors; and the said trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected. Public notice of every annual election shall be given in such manner as the by-laws of the association prescribe. [Act approved February 16, 1905, § 14.] (9th Sess. Chap. 18.)

4251. *Trustees may fix day for election.*—If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place, at which time the election may be held with like effect as if holden on the day fixed in said certificate; and the terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the said certificate of incorporation. [Act approved February 16, 1905, § 15.] (9th Sess. Chap. 18.)

4252. *Annual report.*—The trustees at each annual meeting shall make a report in writing, containing a statement of their

doings and of the affairs of the association, and an account of the receipts and expenditures during the year preceding. [*Act approved February 16, 1905, § 16.*] (9th Sess. Chap. 18.)

4253. *Funds.*—The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by said association, in the purchase of cemetery grounds and property, in fencing, improving and embellishing such grounds and avenues leading thereto, and in defraying the necessary expenses in the management and care of the same, and for no other purposes. [*Act approved February 16, 1905, § 17.*] (9th Sess. Chap. 18.)

4254. *Exemption from taxation.*—The cemetery lands and property of any association formed pursuant to this act, are exempt from all public taxes and assessments, and not liable to be sold on execution, or applied in payment of debts of any individual proprietors; but the proprietors of lot in such cemetery, their heirs or legal representatives, may hold the same exempt therefrom, so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery, or any part of the lands held by such association, for the purpose aforesaid, without the consent of the trustees of such association. [*Act approved March 16, 1905, § 18.*] (9th Sess. Chap. 18.)

4255. *Transfers of lots.*—Whenever the lands of any such association are laid out in lots, and such lots or any of them are transferred to individual proprietors, and after there has been an interment in any lot so transferred, such lot from the time of such interment shall forever thereafter be inalienable, and shall upon the death of the proprietor descend to the heirs of such proprietor, forever; but any one or more of such heirs may release to any other of the said heirs his or their interest in the same; a copy of such release shall be filed with the secretary of said association, or with the county clerk and recorder of the county within which said lot shall be situated. The body of any deceased person shall not be interred in such lot unless it is the body of a person having, at the time of such decease, an interest in such lot, or of a relative of some person having such interest, or the wife of such person, or the husband of such person, or the relative of such husband or wife, except by consent of all persons having an interest in such lot. *Provided*, that the person or persons who shall be invested with the title to any such lot or lots, or part thereof, may, at any time, sell, convey and release any such lots or parts thereof to the Cemetery Association maintaining the Cemetery in which such lots are situate; a copy of the instruments of such conveyance to be filed as above provided in case of releases from one heir to another. And such cemetery association shall have power to use any funds under its control for

such purposes, and shall hold and shall have power to convey any such lots or parts thereof to other purchasers in the same manner and with the same effect as it holds and can convey any other of its cemetery lots. But this proviso shall not allow or authorize the conveyance by persons invested with the title thereto, to such association of any piece of ground in which the body of any deceased person theretofore there lawfully interred shall actually remain interred at the time of such attempted conveyance. [*Act approved February 16, 1905, § 19.*] (9th Sess. Chap. 18.)

4256. *Permanent improvement fund.*—That any association formed under the provisions of this act, which shall have established and be maintaining a cemetery, may, by a two-third vote of the trustees of such association, which vote may be taken at any regular meeting of such trustees, provide in accordance with the terms of this act, for the establishment of a permanent fund, the income whereof shall be devoted to the care, maintenance and improvement of such cemetery, which fund shall be known as the "Permanent Care and Improvement Fund" of such Cemetery Association. [*Act approved February 16, 1905, § 20.*] (9th Sess. Chap. 18.)

4257. *Trustees of fund.*—Upon such vote the trustees of such association shall proceed to choose by ballot and appoint by deed of the association, a board of trustees of such fund. Such board shall consist of not less than three nor more than five persons, the exact number to rest in the discretion of the said trustees of said association. Such trustees of said fund must be citizens and freeholders of the State of Montana during all the time they exercise the power of such trust. Upon the election, appointment and qualification, as hereinbefore provided, of the said trustees of such fund, all the title to the funds included in said trust, and all the rights, powers, authorities, franchises and trusts whatsoever thereunto appertaining shall at once vest in them; or, in case of the failure of any of those so chosen and appointed, to qualify within thirty days after their appointment, then the same shall vest in the one or more who shall so qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, the one or more who shall so have qualified shall forthwith fill all vacancies in the said board of trustees of such fund, by choosing and appointing by deed persons to be such trustees upon qualification. And such trustees of the fund shall have power in the same manner to revoke any choice and appointment, and to appoint any other person to be such trustee in any case where one chosen and appointed shall fail to qualify as herein provided, within thirty days after appointment. All appointments to fill vacancies and all revocations must be made unanimously. [*Act approved February 16, 1905, § 21.*] (9th Sess. Chap. 18.)

4258. *Tenure of office.*—The tenure of office of the trustees of such fund shall be for life. [Act approved February 16, 1905, § 22.] (9th Sess. Chap. 18.)

4259. *Bond of trustees.*—Before exercising, holding or having any of the powers, duties, rights, titles, authorities or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained, a bond in a sum not less than five thousand (5,000) dollars, and at least equal to one-third the amount of the fund at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1st of the next even numbered year after the year in which such bond shall be given, and until such trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists, or some part thereof, shall be situate, and shall be filed with the Treasurer of such cemetery association. Any failure so to renew bonds within thirty days after the time hereinbefore provided, shall be a sufficient ground for removal of any trustee within the discretion of competent jurisdiction, upon application of any person interested. [Act approved February 16, 1905, § 23.] (9th Sess. Chap. 18.)

4260. *Vacancies in board.*—In case of the death, resignation, disability or removal of any member or members of such board of trustees of said fund, the survivor or survivors of them shall forthwith choose and appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided in case of an original vacancy. [Act approved February 16, 1905, § 24.] (9th Sess. Chap. 18.)

4261. *Powers of survivors.*—In case of the death, resignation, disability or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises and trusts whatsoever existing in such trustee at the time of such death, resignation, disability or removal, shall at once without further act or conveyance, vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted. All newly appointed trustees shall at once upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises and trusts belonging to such board; and

the same shall always be vested in the members of such board as actually constituted. [*Act approved February 16, 1905, § 25.*] (*9th Sess. Chap. 18.*)

4262. *Powers of district court.*—In case of death, removal, resignation or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises and trusts, until the organization of a new board of trustees, shall vest in the district court in which such cemetery, or the greater part thereof, shall be situate. In such case such board of trustees may be reconstituted by the said district court, on application of any person interested, on such notice to other persons interested as such court may order. The trustees so appointed to and accepting such trust shall become vested with all the aforesaid titles, estates, interests, authorities, powers, franchises, and trusts belonging thereunto, upon qualification as hereinbefore provided. In case of any vacancy or vacancies continuing in the board of trustees of such fund for the period of one year, such vacancy or vacancies may be filled by the said district court in like manner. All trustees appointed by such court under the provisions of this section, shall have all the rights, powers, authorities and franchises as trustees appointed under the other sections of this act. Any owner of an interest in any lot in the cemetery cared for by such trust, and any trustee of the association of such cemetery, and any trustee of the fund, shall be deemed to be sufficiently interested to make any application provided for in this section or in section 4259 (23) of this act. [*Act approved February 16, 1905, § 26.*] (*9th Sess. Chap. 18.*)

4263. *Records.*—All instruments of appointment of trustees of such funds shall be recorded with the secretary of the association establishing the fund. [*Act approved February 16, 1905, § 27.*] (*9th Sess. Chap. 18.*)

4264. *Transfer of funds.*—That from and after the vote to establish such permanent care and improvement fund by the trustees of any cemetery association as provided in section 4255 (19) of this act, the trustees of such cemetery association shall provide by resolution spread upon the minutes of such corporation, for a transfer to said permanent care and improvement fund, (not less than fifteen nor more than forty per cent.) of the proceeds arising from the sale of cemetery lots by such association, which shall be paid over quarterly upon the first day of January, April, July and October in each year, to the trustees of such fund. If at any time there shall remain in the hands of such association unexpended money over and above all liabilities of the association, the board of trustees of such association may by a two-third vote, appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund. *Provided*, that such fund shall never in any case be allowed to exceed the sum of

five thousand (5,000) dollars per acre of the cemetery thereby to be cared for. And when such sum shall reach such an amount all appropriations and payments thereto whatsoever shall cease. [*Act approved February 16, 1905, § 28.*] (9th Sess. Chap. 18.)

4265. *Principal of fund to be reserved.*—The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on the first of January and first of July in each year, turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees. [*Act approved February 16, 1905, § 29.*] (9th Sess. Chap. 18.)

4266. *Disposition of income.*—Such income shall be used in the discretion of the trustees of such association, solely for the care, maintenance and improvement of such cemetery, its grounds and avenues leading thereto, except as herein provided. In event of any portion of the income so paid over remaining unexpended and unappropriated for one year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund, and become a part of the principal of such fund. [*Act approved February 16, 1905, § 30.*] (9th Sess. Chap. 18.)

4267. *Investment of fund.*—The principal of such fund may be invested in the way in which trust funds are permitted to be invested in the State of Montana, and not otherwise. [*Act approved February 16, 1905, § 31.*] (9th Sess. Chap. 18.)

4268. *Compensation of trustees.*—The members of the Board of Trustees of such permanent care and improvement fund shall each receive per diem compensation of five (\$5.00) dollars for each day actually employed in the duties of such trust, but no trustee shall receive more than one hundred (\$100.00) as such compensation in any one year. The fees of such members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach one hundred thousand (\$100,000.00) dollars, and thereafter the same shall be paid out of the income of such fund. [*Act approved February 16, 1905, § 32.*] (9th Sess. Chap. 18.)

4269. *Secretary of board.*—The Secretary of the cemetery association shall act as secretary of the board of trustees of such fund, and shall keep a full record of their proceedings. [*Act approved February 16, 1905, § 33.*] (9th Sess. Chap. 18.)

4270. *Annual report.*—The trustees of such fund shall annually on the first day of January, make their report of the condition of such trust fund to the trustees of the cemetery association. Such reports shall always be kept by the secretary of such association, and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund. [*Act approved February 16, 1905, § 34.*] (9th Sess. Chap. 18.)

TITLE VIII.

RAILROAD CORPORATIONS.

- CHAPTER I. GENERAL POWERS.
- II. RAILROAD EQUIPMENTS AND ROLLING STOCK.
- III. LIVE STOCK KILLED OR INJURED BY RAILROADS.
- IV. GENERAL REGULATIONS OF BUSINESS.
- V. BOARD OF RAILROAD COMMISSIONERS.

CHAPTER I.

GENERAL POWERS.

- ARTICLE I. GENERAL POWERS.
- II. FURTHER POWERS.

ARTICLE I.

GENERAL POWERS.

- Section 4271. *May construct and operate railroads.*
- “ 4272. *Capital stock.*
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- “ 4295. *Judgment against.*

4271. (§ 890.) *May construct and operate railroads.*—Any railroad corporation shall be authorized to locate, construct, maintain and operate a railroad with a single or double track,

with such side tracks, turnouts, machine shops, offices and depots as may be necessary between any points it may select within the places named in the articles of incorporation as termini of such road, and it may construct branches to any point in this state, and connect its road with that belonging to any other person or corporation, and may consolidate with any road not a parallel or competing line.

State v. Court, 34 Mont. 539; 88 Pac. 46.

4272. (§ 891.) *Capital stock*.—The capital stock of such corporation shall consist of such sum as may be named in the articles of incorporation, in shares of one hundred dollars each; such shares shall be regarded as personal property. An installment of ten per centum on each share of stock shall be paid at the time of making the subscription, and the residue thereof shall be paid in installments, not exceeding twenty-five per centum on the capital stock, which installments shall not be called for more frequently than once in three months, and shall be payable at the principal office of the corporation to such persons as may be required by the directors.

Daly Bank v. Great Falls Co., 32 Mont. 303; 80 Pac. 253.

4273. (§ 892.) *Sale of delinquent stock*.—If any installment of stock shall remain unpaid for sixty days after the time specified for payment thereof, whether such stock is held by the original subscriber or his assignee, trustee or successor in interest, the directors may sell the stock so unpaid at public auction for the installment then due thereon, first giving thirty days' public notice of the time and place of sale in some newspaper of general circulation in this state and by written notice sent by mail within five days after default made, to each stockholder who is in default and whose name appears upon the books of the corporation, directed to him at his place of residence, or if that is not known to the secretary, then to his address as last reported by the secretary of the corporation; and if any residue of money shall remain after paying the amount due on said stock, the same shall, on demand, be paid over to the owner; but where any stock shall have belonged to a person deceased, the claim for installments shall not be liable to sale hereunder until a failure by the personal representative of the deceased owner to pay the installments due in regular course of administration.

4274. (§ 893.) *Books to be opened for subscription. Election of directors*.—The persons named in said articles of incorporation, or a majority of them, shall be authorized to order books to be opened for receiving subscriptions to the capital stock of said corporation, at such time or times and at such place or places as they may deem expedient, after having given at least thirty days' notice in a newspaper of general circulation in this state, of the time and place of opening books; and as soon as five per

centum on the capital stock shall be subscribed, they may give like notice for the stockholders to meet at such time and place, within the state, as they may designate, for the purpose of electing five or more directors, who shall continue in office until the time fixed for the annual election, which time shall be within six months from the date when such directors were elected, and until their successors are elected and qualified; at the time and place appointed directors shall be elected in the manner provided in § 3835 (*436*) of this code. After the first election of directors, no person save the personal representatives of deceased persons, as aforesaid, shall vote on any share on which any installment is in default by reason of the non-payment thereof, after the expiration of the thirty days' notice of sale hereinbefore provided for. The persons named in such articles, or such of them as may be present, shall be inspectors of such election, and shall certify what persons are elected directors, and appoint the time and place for holding their first meeting. A majority of said directors shall form a board and be competent to fill vacancies therein, make by-laws, and transact all business of the corporation. A new election shall be annually held for directors, at such time and place as the stockholders at their first meeting shall determine, or as the by-laws of the corporation may require; and the directors elected at any election shall, so soon thereafter as may be convenient, choose one of their number to be president, and shall appoint a secretary and a treasurer of the corporation. The directors, before entering upon their duties, shall each take an oath or affirmation faithfully to discharge his duties; and they may from time to time make such dividends of the actual net profits of said corporation as they may think proper, and shall hold their offices until their successors are elected and qualified.

4275. (§ 894.) *Powers of a railroad corporation.*—Every railroad corporation has power:

1. To cause such examination and surveys to be made as may be necessary to the selection of the most advantageous route for the railroad; and for such purposes their officers, agents, and employes may enter upon the lands or waters of any person, subject to liability for all damages which they do thereto.

2. To receive, hold, take, and convey, by deed or otherwise, as a natural person, such voluntary grants and donations of real estate and other property which may be made to it to aid and encourage the construction, maintenance, and accommodation of such railroad.

3. To purchase, or by voluntary grants or donations to receive, enter, take possession of, hold, and use all such real estate and other property as may be absolutely necessary for the construction and maintenance of such railroad, and for all stations, depots, and other purposes necessary to successfully work and conduct the business of the road.

4. To lay out its road, not exceeding in width one hundred feet on each side of its center line, unless a greater width be required for the purpose of excavation or embankment, and to construct and maintain the same, with a single or double track, and with such appendages and adjuncts as may be necessary for the convenient use of the same.

5. To construct their road across, along, or upon any stream of water, watercourse, roadstead, bay, navigable stream, street, avenue, or highway, or across any railway, canal, ditch or flume, which the route of its road intersects, crosses or runs along, in such manner as to afford security for life and property; but the corporation shall restore the stream or water course, road, street, avenue, highway, railroad, canal, ditch or flume thus intersected to its former state of usefulness, as near as may be, or so that the railroad shall not unnecessarily impair its usefulness or injure its franchise.

6. To cross, intersect, join, or unite its railroad with any other railroad, either before or after construction, at any point upon its route, and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connections; and every corporation whose railroad is, or shall be hereafter, intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersections and connections, and grant facilities therefor; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points or the manner of such crossings, intersections, and connections, the same shall be ascertained and determined as is provided in title VII., part III., Code of Civil Procedure.

7. To purchase lands, timber, stone, gravel, or other materials, to be used in the construction and maintenance of its road, and all necessary appendages and adjuncts, or acquire them in the manner provided in title VII., part III., Code of Civil Procedure, for the condemnation of lands; and to change the line of its road, in whole or in part, whenever a majority of the directors so determine, as is provided hereinafter; but no such change must vary the general route of such road, as contemplated in its articles of incorporation.

8. To carry persons and property on their railroad, and receive tolls or compensation therefor.

9. To erect and maintain all necessary and convenient buildings, stations, depots, fixtures, and machinery for the accommodation and use of their passengers, freight and business.

10. To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor within the limits prescribed by law, and subject to alteration, change, or amendment by the legislative assembly at any time.

11. To regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations for the management of its business transactions usual and proper for railroad corporations.

State v. Court, 34 Mont. 539; 88 Pac. 46. A railway company may acquire any land necessary for the construction and maintenance of its road and adjuncts by purchase or voluntary donation, subject to the limitation that the right of way shall not exceed two hun-

dred feet in width, except where a greater width is required for excavations and embankments. Changing the channel of a river is a part of the construction thereof.

Southern R. Co. v. Railway Co., 111 Cal. 227; 43 Pac. 602.

4276. (§ 895.) *Right of way in canyon.*—Any such corporation whose right of way, or whose track upon such right of way, extends through any canyon, pass or defile, shall not exclude any other such corporation from a passage through the same upon equitable terms and in case of disagreement upon application of either of the parties, with notice to the other, the same shall be adjusted by a court of competent jurisdiction; and if the passage of any such railroad through the canyon, pass or defile causes the disuse or change of location of any public wagon road that may traverse the same, damages shall be awarded therefor, as provided by the Code of Civil Procedure, and if it shall become necessary for any other railroad company passing through the state to cross or pass any other railroad track or defile already constructed or surveyed, the same may be so done without any compensation therefor, except the actual damage done by so doing; and when two or more companies desire to pass through the same canyon, pass or defile, neither shall exclude the other from passing through the same, and neither shall have any compensation therefor, except the actual damage done by so doing; and should it be necessary that the said companies should use the same track or bed in passing through such canyon, pass or defile, the same may be done without any compensation therefor from one to the other, except the actual damage by so doing.

4277. (§ 896.) *Survey, annual work, and completion of road.*—Every railroad corporation shall be required to complete fifteen miles upon each of its lines, branches, or extensions, each year subsequent to the passage of this title, in the case of companies already organized, and each year subsequent to the filing of articles of incorporation in the case of corporations hereafter organized. But organization under this chapter shall not be deemed to confer any right to any portion of its line as designated in its articles of incorporation on which a preliminary survey and location shall not have been made, and if such corporation shall fail to comply with the requirements of this section, it shall forfeit its charter and all the rights and privileges conferred by said articles as to any incompleted portion of its line of road. Each railroad corporation shall complete the whole line of its road within five years from the passage of this chapter, in the

case of corporations already organized, and within seven years from the date of filing articles of incorporation in the case of corporations hereafter organized. Upon the written application of any county attorney of a county through which the line of said road would pass, made to the district court, setting forth the alleged cause of such forfeiture, it shall be the duty of such court, after notice to the corporation, to examine the cause; and if, in his judgment, sufficient cause exists for such forfeiture, to declare and enforce the forfeiture.

4278. (§ 897.) *Railroads on reservations.*—Any railroad corporation now or hereafter organized under the laws of this state, for the purpose of building railroads which extend upon Indian or military reservations within this state, shall not forfeit its charter, or any rights or privileges, by reason of its failure to build and complete any portion of its road upon such reservations, until a grant of a right of way therefor has been obtained from the United States, or any parties authorized in that behalf, and thereafter the provisions of this chapter shall be applicable to said corporations.

4279. (§ 898.) *May change location or grade.*—Whenever any corporation organized under this chapter shall find it necessary for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the location or grade of any portion of its road, such railroad corporation is hereby authorized to make such changes, not departing from the general route prescribed in the articles of incorporation.

4280. (§ 899.) *May borrow money and secure payment.*—Any corporation organized under this chapter shall have power to borrow money on the credit of the corporation to an amount not exceeding its authorized capital stock, at a rate of interest to be agreed upon by the respective parties, and may execute bonds therefor in sums of not less than one hundred dollars, and secure the payment thereof by mortgage or pledge of the property and income of such corporation. And if the said mortgage shall so provide, it shall be and remain a valid lien upon all of the property of said corporation of whatever kind then existing, or that may thereafter be by it acquired, irrespective of the law now in force relating to chattel mortgages, and the same shall be taken, held and enforced in the same manner as mortgages upon real estate now are held and enforced.

Boyd v. Heron, 125 Cal. 454; 58 Pac. 64.

4281. (§ 900.) *May buy and sell necessary real estate.*—Any such corporation may acquire by purchase or gift any lands in the vicinity of its road or through which the same may pass, so far as may be convenient or necessary to secure the right of way, or such as may be granted to aid in the construction of such road,

and convey the same in such manner as the directors may prescribe, and all deeds and conveyances made by such corporation shall be signed by the president, under the seal of the corporation.

4282. (§ 901.) *May divert streams, etc.*—It shall be lawful for such corporation, whenever it may be necessary in the construction of its road to cross any road or stream of water, to divert the same from its present location or bed; but such corporation shall, without unnecessary delay, place such road or stream in such condition as not to impair its former usefulness.

State v. Court. 34 Mont. 541; 88 Pac. 46.

4283. (§ 902.) *Principal office.*—Every such corporation shall, as soon as convenient after its organization, establish a principal office at some point on the line of its road, and may change the same at pleasure, giving public notice in one or more newspapers in the state having the largest circulation, and notice to the secretary of state of such establishment or change.

4284. (§ 903.) *May maintain telegraph line.*—Any such corporation is hereby authorized to construct, maintain and operate a telegraph line along its road. The provisions of this chapter concerning the grant for station buildings, work-shops, depots, machine shops, switches, side tracks, turn-tables and water stations shall not apply to mineral lands of the United States, or to lands reserved by the United States, nor to any lands as against the United States.

4285. (§ 904.) *State not responsible for debts of railroad.*—Nothing in this chapter shall be construed to make the state, or any municipality therein, liable for any debts or obligations of any character which may be contracted by such corporations.

4286. (§ 905.) *Liability to employe.*—In every case the liability of the corporation to a servant or employe acting under the orders of his superior, shall be the same in cases of injury sustained by default or wrongful act of his superior, or to an employe not appointed or controlled by him, as if such servant or employe were a passenger.

4287. (§ 906.) *May increase capital stock.*—If the amount of the capital stock shall be found insufficient to enable any such corporation to construct its road, it shall be competent for the directors upon a vote of the stockholders, to increase the stock to such sum as shall cover the expenses of the construction of its road.

4288. (§ 907.) *May accept provisions of act of congress.*—Any such corporations may accept the provisions of any act of congress providing for the creation of bodies corporate for the purposes aforesaid, but such acceptance shall not impair or affect the legal or equitable rights of any creditor as they exist at the time of such acceptance.

4289. *Regulations.*—If any railroad corporation within this State shall ask, charge, or demand any exorbitant rate of compensation for the transportation of any freight, baggage, express matter or passenger, or make any unjust discrimination in its rates, or shall neglect to provide comfortable and convenient cars or coaches for the transportation of its passengers and their baggage, or safe cars for the transportation of express matter and freight, or shall use any highly inflammable oils for lighting any car on its passenger trains, or shall wilfully neglect to keep a table of its passenger tariff and rates of freight conspicuously posted in each depot within this State, or fail to light its track in any City in this State, or shall transport within this State on any of its passenger cars, any oil of vitriol, gun powder, lucifer matches, nitro glycerine, glynon oil, nytroleum or blasting oil, or nitrate oil, or powder mixed with any such oil, or fibre saturated therewith, or duolin or giant powder, or blasting powder, or any other goods of a dangerous nature, or in any incorporated city or town in this state run any train at a rate of speed forbidden by the laws of this State or the ordinances of such city or town, or run any train over any unsafe bridge, trestle work, or aqueduct in this State; or fail to have upon any locomotive in use by it in this State a bell and steam whistle in fit condition for use thereon; or shall permit any locomotive to approach any highway, road or railroad crossing, without causing the whistle to be sounded, at a point between fifty and eighty rods from the crossing, and the bell to be rung from said point until the crossing is reached; or shall wilfully fail to make any report herein required, or which may be hereafter required by any law of this State, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined for the first offense in the sum of one thousand dollars, and for the second violation of the same provision, two thousand dollars, and for every other and further violation of any provision of which it has been twice before found guilty, a sum not less than five nor more than ten thousand dollars. [*Act approved March 5th, 1903.*] (8th Sess. Chap. 66.)

Hunter v. Mont. C. R. Co., 22 Mont. 530; 57 Pac. 142. It is negligence for a railroad to permit its trains to approach a crossing without sounding the whistle and ringing the bell.

4290. (§ 909.) *Annual report, what to contain.*—It is hereby made the duty of the president or other officer in charge of each and every railroad corporation having a line of railroad in this state, to make an annual report to the state auditor for the year ending on the 30th day of November preceding, which report shall be verified by the oath or affirmation of such president or other officer in charge, and be filed in the office of the state auditor by the first day of December in each year, and shall state:

1. The amount of capital stock paid in.
2. The amount of capital stock unpaid.

3. The amount of funded debt.
4. The amount of floating debt.
5. Cost of construction.
6. Cost of right of way.
7. Cost of equipment.
8. All other items embraced in cost of road and equipment, not embraced in three preceding items.
9. Total cost of road and equipments to date.
10. Length of single main track, laid with iron or steel.
11. Length of double main track, and width of guage.
12. Length of branches, stating whether they have single or double tracks.
13. Aggregate length of sidings, and other tracks not above enumerated; total length of iron and steel, each separately stated, embraced in preceding items.
14. The maximum grade, with its length in main road, and also in branches.
15. The shortest radius of curvature, with length of curve in main road and also in branches.
16. Total degrees of curvature in main road, and also in branches.
17. Total length of straight line in main road, and also in branches.
18. Number of wooden bridges, and aggregate length in feet.
19. Number of iron bridges, and aggregate length in feet.
20. Number of stone bridges, and aggregate length in feet.
21. The number of wooden trestles and aggregate length in feet.
22. The greatest age of wooden bridges.
23. The average age of wooden bridges.
24. The greatest age of wooden trestles.
25. The number and kind of new bridges built during the year, and length in feet.
26. The length of road unfenced on either side, and the reason therefor.
27. Number of engines.
28. Number of passenger cars.
29. Number of express and baggage cars.
30. Number of freight cars.
31. Number of other cars.
32. The highest rate of speed allowed by express passenger trains.
33. The highest rate of speed allowed by mail and accommodation trains.
34. The highest rate of speed allowed by freight trains.

35. The rate of fare for passengers charged for the respective classes per mile.

36. The highest rate per ton per mile charged for the transportation of the various classes of freight, through and local.

37. The length of new iron or steel laid during the year.

38. The length of re-rolled iron laid during the year.

39. The number of miles run by passenger trains.

40. The number of miles run by freight trains.

41. The number of passengers (all classes) carried in cars.

42. The number of tons of through freight carried.

43. The number of tons of local freight carried.

44. The number of tons of ore, cattle and grain transported.

45. The value of coin, bullion and dust carried.

46. Earnings from transportation of passengers.

47. Earnings from transportation of freight.

48. Earnings from mail and express.

49. Earnings from all sources. Total earnings for the year.

50. Expenditures for construction and new equipments.

51. Expenditures for maintenance of way and structure.

52. Expenditures for maintaining and operating motive power and cars.

53. Expenditures for transportation expenses, including those of stations and trains.

54. Expenditures for dividends, rate per cent. and amount.

55. All other expenditures, either for management of road, maintenance of way, motive powers and cars, and for other purposes. Total expenditure during the year.

56. The number and kind of farm animals killed and the amount of damages paid therefor.

57. A statement of all casualties resulting in injuries to persons and the extent and causes thereof, and such other and further information as may be required by the state auditor; but if any corporation shall be unable to furnish the required information, the reason thereof shall be given. The state auditor shall prepare and furnish to each railroad corporation or to each organization having one or more railroads in charge, blank forms for making the reports required by this chapter, which blanks may be so prepared by the auditor as to obtain the information required by this section more in detail or omit such of a historical or permanent character as may have been given in previous reports.

Daly Bank v. Great Falls Co., 32 Mont. 303; 80 Pac. 253.

4291. (§ 910.) *May extend line into Montana.*—Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory whose line of railroad shall reach or intersect the boundary line of this state at

any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension or continuation of any such extension or branch. Before making such extension into the state, or building any such branch road, or any such continuation, such corporation shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the general route of such proposed extension, branch or continuation in the manner provided in §§ 3818 (403) and 3819 (404), of this code, and file a copy of such record, certified by the president and secretary, in the office of the secretary of the state, who shall record the same when presented for record. Thereupon such corporation shall have all the rights, powers, privileges, immunities, and franchises to make, maintain and operate such extension, and build, maintain and operate such branch or continuation which it would have had if it had been incorporated for such purposes, under the general laws of the state or territory of Montana.

4292. (§ 911.) *Two or more may consolidate.*—Any two or more railroad corporations whose respective lines, not being parallel or competing lines, are wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana, or of the United States, or of any other state or territory, when their respective lines of road or any branch thereof so connect within this state that they may operate together as one property, may consolidate their capital stock, franchises and property, and thereby become one corporation by any name adopted by them, which may be that one of them, upon such terms and conditions as may be agreed upon by them, in the manner following: Articles of agreement shall be entered into by and between such corporations under their respective corporate seals and the signatures of their respective presidents and secretaries containing the terms and conditions of such consolidation and the mode of carrying the same into effect, including the name of the corporation resulting from such consolidation, the amount of its capital stock, the number and amount of shares thereof, the manner of retiring the shares of the capital stock of the corporations so consolidated, or of converting the same into or exchanging it for the capital stock of such resultant corporation, the number which shall constitute the board of directors of such corporation and what officers it shall have, and the persons who shall constitute the first board of directors and officers thereof, their term of office, and the manner in which their successors shall be elected, which shall be according to the provisions of § 3835 (439) of this code, and such other matters as may be deemed necessary to perfect such consolidation and as may be

agreed upon. Such articles of agreement shall, before the same shall be effectual, be assented to, approved or ratified by the stockholders of the respective corporations so consolidated at a regular meeting of such stockholders, or a special meeting thereof, duly called and held, by resolution adopted by a vote in favor thereof, in person or by proxy, of the holders of at least three-fifths in amount of the outstanding capital stock of such corporations respectively. A duplicate of such articles of agreement, together with a copy of the resolutions so adopted by the stockholders of such corporations assenting to, approving or ratifying the same, certified under the corporate seal and the signature of the secretary, and verified by a sworn statement of the president and secretary of the corporation, stating that such resolution was duly adopted by the vote in favor thereof of the holders of three-fifths in amount of the outstanding capital stock of the corporation, at a meeting of the stockholders thereof, duly held, shall be recorded in the office of the secretary of state, and it shall be the duty of the secretary to record the same upon presentation for that purpose; and upon the filing thereof for record, as aforesaid, the corporation formed by such consolidation shall be a corporation by the corporate name mentioned in such articles of agreement, and as such shall be perpetual, and shall succeed to and have, own, possess, exercise and enjoy, all the powers, rights, franchises, privileges, immunities and property of every name and nature possessed by the corporations so consolidated, or to which they were entitled at the time of such consolidation, and shall be entitled to have, own, hold, exercise, possess and enjoy, all the powers, rights, franchises, privileges and immunities which may at any time appertain to railroad corporations under the general laws of this state.

State v. Railway Companies, 21 Mont. 233; 53 Pac. 630. The provisions of sections 911 and 912 of this code, relat-

ing to the power of railroad companies to consolidate, lease and purchase were repealed by section 923 of this code.

4293. (§ 912.) *May lease or purchase other railroads.*—Any railroad corporation whose line is wholly or partly within this state, or reaches the boundary line thereof, whether chartered by or organized under the laws of the state or territory of Montana or the United States, or of any other state or territory, may lease or purchase the whole or any part of the railroad or line of railroad of any railroad corporation, constructed or unconstructed, together with all the rights, powers, immunities, privileges, franchises and all other property or appurtenances thereto; *Provided*, The railroad or line of railroad so leased or purchased is continuous of or connected with its own line and not a parallel or competing line. Before any such lease or purchase shall be effectual it shall be assented to or approved or ratified by the stockholders of each corporation by a vote in favor thereof, at a

general or special meeting of such stockholders by the holders of three-fifths in amount of all the outstanding capital stock of the company; and any such railroad corporation, whether chartered by or organized under the laws of the state or territory of Montana or of the United States, or of any other state or territory, may take, purchase, hold, sell and dispose of, or guarantee the payment of the capital stock, bonds and securities of any other railroad corporation whose line of railroad within this state is continuous of or connects with its own line. Leases heretofore made in conformity to the provisions of this chapter shall, when ratified as herein provided, be held valid in like manner as if made by authority thereof.

State v. Railway Companies, 21 Mont. 233; 53 Pac. 626.

4294. (§ 913.) *May issue and secure bonds.*—Any railroad corporation whose line is wholly or partly within this state, whether chartered by or organized under the laws of the state or territory of Montana or of the United States, or of any other state or territory, shall have authority and power to make, issue, negotiate and deliver its bonds, securities or obligations to such amount, not exceeding its authorized capital stock, bearing such rate of interest and payable at such time or times as its board of directors shall determine, and may negotiate, sell, pledge, or otherwise dispose of the same at such price, and on such terms, and in such manner as its board of directors may authorize or determine; and to secure the payment of all or any of such bonds, securities or obligations, and the interest thereon, may make, execute and deliver such mortgages or deeds of trust upon all or any part of its property, income and franchises, as the board of directors may determine or direct; and if any such mortgage or deed of trust shall so provide, and to the extent it shall provide, it shall be and remain a valid lien upon the property, rights and franchises of the corporation of whatever nature or kind afterwards acquired, as well as upon property, rights and franchises owned or possessed by the corporation at the time of its execution, irrespective of the law relating to chattel mortgages, and any such mortgage or deed of trust shall be taken, held and enforced in the same manner as mortgages of real estate; and the record thereof in the office of the secretary of state shall be notice of its existence and contents to all persons, without any further record thereof, and it shall be the duty of the secretary to record in his office any such mortgage or deed of trust, when presented for that purpose.

State v. Railway Companies, 21 Mont. 229; 53 Pac. 625.

4295. (§ 914.) *Judgment against.*—A judgment against any railroad corporation for any injury to person or property, or for material furnished, or work or labor done upon any of the prop-

erty of such corporation, shall be a lien within the county where recovered on the property of such corporation, and such lien shall be prior and superior to the lien of any mortgage or trust deed provided for in this chapter.

ARTICLE II.

FURTHER POWERS.

Section 4296. Amendment of certificate of incorporation.

“ 4297. *Record of amendment.*

“ 4298. *Amended certificate may be amended.*

“ 4299. *May lease or buy other railroads.*

“ 4300. *Prior consolidations legalized.*

4296. (§ 920.) *Amendment of certificate of incorporation.*—That any corporation heretofore formed, or which may hereafter be formed, under the provisions of chapter twenty-five, of the fifth division of the compiled statutes of Montana, relating to railway corporations may by a majority vote of its board of directors and by the assent of its stockholders, representing at least two-thirds of the subscribed capital stock of such corporation, expressed in writing, or at a general or special meeting of stockholders, amend its certificate of incorporation in any one or more of the following particulars, to-wit: By more particularly describing the general route of its road, or any part thereof, or by correcting or supplying any defect, mistake or insufficiency in the description thereof, contained in said certificate, by describing any change or changes in its route or any additions or extensions to or of its line of road by adding thereto or extending the same to points or termini other than those mentioned in the original certificate of incorporation. [Act approved Feby. 24, 1893.]

4297. (§ 921.) *Record of amendment.*—That a copy of such amendment or of the original certificate of incorporation, as amended, and a copy of the resolution of the board of directors adopting the same, certified by the president and secretary of the company, under the corporate seal, to be correct and to have been adopted by a majority vote of the directors of the company and to have been assented to in writing or by vote of stockholders representing at least two-thirds of the subscribed capital stock of the company shall be filed with, and recorded by the secretary of state; and a like copy certified as aforesaid, shall be filed with and recorded by the county clerk and recorder of the county in which the principal place of business of the company is or shall be situated; and from the time of such filing, said original certificate of incorporation shall be deemed to be amended accordingly, and said corporation shall have the same rights and powers and it and the stockholders thereof shall be subject to the same liabili-

ties, as if such amendment had been embraced in the original articles or certificate of incorporation. [*Act approved Feby. 24, 1893.*]

4298. (§ 922.) *Amended certificate may be amended.*—That said certificate and amended certificate, may be amended in like manner whenever deemed expedient or necessary by the board of directors and stockholders of the company. [*Act approved Feby. 24, 1893.*]

4299. (§ 923.) *May lease or buy other railroads.*—Any railroad company now or hereafter incorporated pursuant to the laws of this state, or of the United States or of any state or territory of the United States may at any time, by means of subscription to the capital stock of any other railroad company, or by the purchase of its stock or bonds, or by guaranteeing its bonds, or otherwise, aid such company in the construction of its railroad within or without this state; and any company owning or operating a railroad within this state may extend the same into any other state or territory, and may build, buy, lease, or may consolidate with any railroad or railroads in such other state or territory, or with any other railroad in this state, and may operate the same, and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; or any railroad company may sell or lease the whole or any part of its railroad or branches within this state constructed or to be constructed, together with all property and rights, privileges and franchises pertaining thereto, to any railroad company organized or existing pursuant to the laws of the United States or of this state or of any other state or territory of the United States; or any railroad company incorporated or existing under the laws of the United States or of any state or territory of the United States, may extend, construct, maintain and operate its railroad, or any portion or branch thereof, into and through this state, and may build branches from any point, or such extension to any place or places within this state; and the railroad company of any other state or territory of the United States which shall so purchase or lease a railroad, or any part thereof in this state, or shall extend or construct its road or any portion or branch thereof in this state, shall possess and may exercise and enjoy, as to the control, management and operation of the said road, and as to the location, construction and operation of any extension or branch thereof, all the rights, powers, privileges and franchises possessed by railroad corporations organized under the laws of this state, including the exercise of the power of eminent domain. Such purchase, sale, consolidation with or lease may be made or such aid furnished upon such terms or conditions as may be agreed upon by the directors or trustees of

the respective companies; but the same shall be approved or ratified by persons holding or representing a majority in amount of the capital stock of each of such companies, respectively, at any annual stockholders meeting or at a special meeting of the stockholders called for that purpose, or by approval in writing of a majority in interest of the stockholders of each company respectively; *Provided*, That nothing in the foregoing provisions shall be held or construed as curtailing the right of this state or the counties through which any such road or roads may be located, to levy and collect taxes upon the same and upon the rolling stock thereof, in conformity with the provisions of the laws of this state upon that subject; and all roads or branches thereof in this state, so consolidated with, purchased or leased, or aided or extended into the state, shall be subject to taxation and to regulation and control by the laws of this state, in all respects the same as if constructed by corporations organized under the laws of this state; and any corporation of another state or territory or of the United States, being the purchaser or lessee of a railroad within this state, or extending its railroad or any portion thereof into or through this state, shall establish and maintain an office or offices in this state at some point or points on its line, at which legal process and notice may be served, as upon railroad corporations of this state; *Provided further*, that before any railroad corporation organized under the laws of any other state or territory or of the United States shall be permitted to avail itself of the benefits of this act, such corporation shall file with the secretary of state a true copy of its charter or articles of incorporation. [Act approved March 4, 1893.]

State v. Railway Companies, 21 Mont. 233; 53 Pac. 627. This section was continued in force after the adoption of this code and repeals sections 911 and

912. *supra*, as to certain rights of railroad companies; and one railroad company can lease its road to a parallel and competing road for a term of ten years.

4300. (§ 924.) *Prior consolidation legalized.*—Any consolidation by sale or otherwise, or any lease or agreement to sell, consolidate with or lease the whole or any part of any railroad and its branch lines organized under the laws of this state, with the franchise appertaining thereto, to any railroad company organized or existing under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies organized under the laws of the United States or of this state or any other state or territory, and a corporation organized under the laws of this state, heretofore executed by the proper officers of the companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution. [Act approved March 4, 1893.]

CHAPTER II.

RAILROAD EQUIPMENTS AND ROLLING STOCK.

- Section 4301. Conditional sale valid.*
“ 4302. *Contract to be recorded.*
“ 4303. *Chattel mortgage.*
“ 4304. *Satisfaction.*
“ 4305. *Conditional sale of equipment.*
“ 4306. *Contract to be recorded.*
“ 4307. *Limitations.*

4301. (§ 930.) *Conditional sale valid.*—In all cases where railroad equipment and rolling stock may have been, or shall be sold, to any person, firm, or corporation, to be paid for, in whole or in part, in installments, or shall be leased, rented, hired, or delivered, on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring, or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer, or deliverer of the same until the agreed upon price, or rent for such property shall have been fully paid, such condition in regard to title so remaining in the vendor, lessor, renter, hirer, or deliverer, until such payments are fully made, shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; *Provided*, The term during which the installments or rent are to be paid, shall not exceed ten years, and such contract shall be in writing, duly executed, acknowledged, and recorded, as hereafter provided.

4302. (§ 931.) *Contract to be recorded.*—Such contract shall be recorded in the office of the secretary of state, and in the office of the county clerk of the county in which is located the principal office or place of business of such vendee or lessee, and on each locomotive or car that may have been so sold or leased, the name of the vendor, or lessor, or assignee of the vendor or lessor, shall be marked, followed by the word “Owner,” or “Lessor,” as the case may be.

4303. (§ 932.) *Chattel mortgage.*—Any mortgage of personal property which constitutes the equipment, or part of the equipment, of any railroad company, may be recorded as provided in § 4302 (931), of this chapter, and if the same is bona fide the lien thereby created shall be good for all intents and purposes whatever, for such length of time as therein provided, not exceeding said period of ten years.

4304. (§ 933.) *Satisfaction.*—Upon payment in full of the purchase price and the performance of the terms and conditions stipulated in any such contract, a declaration to that effect shall be made by the vendor, or his assignee, which declaration may be made on the margin of the record of the contract, attested

by the secretary of state, or county clerk, as the case may be, or the satisfaction may be made by a separate instrument, which shall be acknowledged and recorded in the offices in which the original contract was recorded, and thereupon the secretary of state and county clerk shall write in the margin of the record the word "Satisfied," together with the date of satisfaction, and the page, and book of record of the declaration of the satisfaction.

4305. (§ 934.) *Conditional sale of equipment.*—In any contract for the sale of railroad or street railway equipment or rolling stock, it shall be lawful to agree that the title to the property sold or contracted to be sold, although possession thereof may be delivered immediately, or at any time or times subsequently, shall not vest in the purchaser until the purchase price shall be fully paid, or that the seller shall have and retain a lien thereon for the unpaid purchase-money, and in any contract for the leasing or hiring of such property, it shall be lawful to stipulate for a conditional sale thereof at the termination of such contract, and that the rentals or amounts to be received under such contract, may, as paid, be applied and treated as purchase-money and that the title to the property shall not vest in the lessee or bailee until the purchase-price shall have been paid in full, and until the terms of the contract shall have been fully performed, notwithstanding delivery to and possession by such lessee or bailee; *Provided*, That no such contract shall be valid as against any subsequent judgment creditor, or any subsequent bona fide purchaser for value and without notice unless:

First: The same shall be evidenced by an instrument executed by the parties and duly acknowledged by the vendee or lessee, or bailee, as the case may be, or duly proved, before some person authorized by law to take acknowledgment of deeds, and in the same manner as deeds are acknowledged or proved.

Second: Such instrument shall be filed for record in the office of the secretary of state of this state, and also in the office of the county clerk and recorder in each county of this state in which the line of such railroad or street railway company extends.

Third: Each locomotive engine, or car so sold, leased or hired, or contracted to be sold, leased or hired as aforesaid, shall have the name of the vendor, lessor or bailor plainly marked on each side thereof followed by the word "Owner" or "Lessor" or "Bailor" as the case may be. [Act approved March 2, 1893.]

4306. (§ 935.) *Contract to be recorded.*—The contracts herein authorized shall be recorded by the secretary of state in a book of records to be kept for that purpose, and on payment in full of the purchase-money, and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect, may be made by the vendor, lessor, or bailor, or his

or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the vendor, lessor, or bailor, or his or its assignee, and recorded as aforesaid, and for such services the secretary of state shall be entitled to a fee of fifteen dollars, for recording each of said contracts and each of said declarations, and a fee of one dollar for noting such declaration on the margin of the record. [Act approved March 2, 1893.]

4307. (§ 936.) *Limitations.*—This act shall not be held to invalidate or affect in any way any contract heretofore made of the kind referred to in the first section hereof, and any such contract heretofore made, may upon compliance with the provisions of this act, be recorded as herein provided. Nor shall it interfere with the provisions of chapter thirty-six of the fifth division of the compiled statutes of this state, so far as to impair any mortgage or rolling-stock or equipment of any railroad therein provided for, or repeal the provisions therein contained, providing for the making of such mortgages. [Act approved March 2, 1893.]

CHAPTER III.

LIVE STOCK KILLED OR INJURED BY RAILROADS.

Section 4308. *Fences and cattle guards.*

“ 4309. *Liable for injury from negligence.*

“ 4310. *Right of way to be kept clear from dead grass.*

“ 4311. *Designation of stations where records are kept.*

“ 4312. *Penalty.*

“ 4313. *Affidavit of ownership and value.*

“ 4314. *Company may deposit value of animal.*

“ 4315. *Recovery by secretary of state board of stock commissioners.*

“ 4316. *Penalty for driving animals upon track.*

“ 4317. *Carcass and hide of animal.*

“ 4318. *Regulations concerning fences.*

“ 4319. *Cattle guards.*

“ 4320. *Opening under trestles.*

“ 4321. *Limitations.*

“ 4322. *Penalty.*

4308. *Fences and cattle guards.*—Railroad corporations must make and maintain a good and legal fence on both sides of their track and property, and maintain, at all crossings, cattle guards over which cattle or other domestic animals cannot pass. In case they do not make and maintain such fence and guards, if their engines or cars shall kill or maim any cattle or other

domestic animals upon their line of road, they must pay to the owner of such cattle or other domestic animals, in all cases, a fair market price for the same, unless it occurred through the neglect or fault of the owner of the animal so killed or maimed. *Provided*, that nothing herein shall be construed so as to prevent any person, or persons, from recovering damages from any railroad corporation for its negligent killing or injury to any cattle, or other domestic animals, at spurs, sidings, Y's, crossings and turn tables. [*Act approved March 1, 1907.*] (*10th Sess. Chap. 59.*)

4309. (§ 951.) *Liable for injury from negligence.*—Every railroad corporation or company operating any railroad, or branch thereof, within the limits of this state, which shall negligently injure or kill any horse, mare, gelding, filly, jack, jenny, or mule, or any cow, heifer, bull, ox, steer, or calf, or any other domestic animal, by running any engine or engines, car or cars, over or against any such animal, shall be liable to the owner of such animal for the damages sustained by such owner by reason thereof. The killing or injury shall be prima facie evidence of negligence on the part of such corporation or company.

Menard v. M. C. R. Co., 22 Mont. 346; 56 Pac. 594. A domestic railroad company, organized before this code took effect, and which had not made the election provided in sections 400 and 401 *supra*, was not subject to sections 950 and 951 of this code.

Poindexter Co. v. Oregon R. Co., 33 Mont. 343; 83 Pac. 888. In an action against a railroad company to recover

for a bull killed by it, proof that the animal had been fatally injured by the locomotive, but was killed by a section boss of the railroad to end its sufferings, supports the allegation of the killing. An instruction that the law presumed such killing to have been the result of the negligence of the railroad correctly states the law.

4310. (§ 952.) *Right of way to be kept clear from dead grass.*—It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track, and either side thereof, for a distance of one hundred feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds or any dangerous or combustible material; and any railroad company or corporation failing to keep its railroad track and each side thereof free as above specified, shall be liable for any damages which may occur from fire emanating from operating such railroad, and a neglect to comply with the provisions of this section in keeping free any railroad track, and either side for a distance equal to the space of ground covered by the grant of the right of way for the railroad corporation or company, shall be prima facie evidence of negligence on the part of any such railroad corporation or company. But no railroad corporation or company shall be required to keep free as above specified any land not a part of its right of way.

4311. *Designation of stations where records are kept.*—It shall be the duty of any corporation, association, company, per-

son or persons owning, controlling or operating any railroad, or branch thereof, in this state, to designate some station on the line of the same, in each county through which it passes, at which it shall keep a suitable book, and within thirty days after the killing or injuring of any animal or animals, to cause to be entered therein the date when, and the place where the same were killed or injured, as near as may be, together with a description thereof, including the age, color and sex of the same, and marks and brands upon the same as near as the same can be done, which said book shall be kept for the inspection of any person or persons claiming to be interested in the inspection thereof, and shall cause a notice of the station so designated to be filed with the county clerk of the county in which said station is situated; *Provided*, that when such railroad or branch thereof shall run to or through any town or station at which is located the county seat of any county, then such book shall be kept at such town or station at which said county seat is located, and the affidavit provided for by Section 4313 (955) of this Code as amended by an Act entitled "An Act to amend Section 955 of Chapter III, Title VIII, Part IV, Division I, of the Civil Code of Montana relating to livestock killed or injured and to add to said Chapter a Section to be known as Section 955," approved March 6th, 1903, may be served on the agent of such station. [Act approved February 21, 1905.] (9th Sess. Chap. 29.)

4312. (§ 954.) *Penalty*.—Any corporation, association, person or persons so owning, controlling or operating such railroad or branch thereof, failing to designate said station, file said notice, keep said book and make the entries as provided in the preceding section, shall be liable to the owner or owners of the animal or animals so killed or injured, whether negligently done or not, and the court or jury before whom any action is tried for the recovery of damages on account thereof, may, in its or their discretion, render verdict and judgment for the amount of the value of any such animal or animals so killed, or the amount of damages sustained by reason of any injury thereto.

4313. *Affidavit of ownership and value*.—In case any corporation, association, or company, person or persons shall comply with the provisions of Section 4311 (953), of this Chapter, it shall be the duty of the owner or owners of any animal or animals, killed or injured as aforesaid, or his agent, or their agent, within thirty days after information shall have reached him or them of the killing or injury of such animal or animals, to make affidavit of such ownership and the market value of the animal or animals, so killed, or the amount of damages occasioned by such injury, and deliver the same to the person in charge of the said book or station, so designated, and thereupon the said corpora-

tion, association, company, person or persons, shall have fifty days within which to pay the amount claimed, and no action shall be instituted for the recovery of the value of or damages to such animals or animal until the expiration of said time. And whenever any of the live stock referred to in this Chapter shall be injured or killed, as therein recited, and the owner or owners thereof, shall thereafter institute an action for the recovery of the loss or damage so sustained by him, or them, the Court in which such action shall be brought shall, if the plaintiff in such action recover a judgment against the defendant therein, tax, as part of the costs therein, a reasonable sum to be fixed by the Court as a fee to the plaintiff's attorney for conducting said action, which said fee; so fixed and allowed, shall be paid by or collected from the defendant in such action in like manner as other costs *provided*, that no such fee shall be allowed by the Court or collected from the defendant when it shall appear from the pleadings or proof, in any such action, that the defendant prior to the institution of such action, offered or agreed to pay to the plaintiff therein, in settlement of the loss or damages claimed a sum equal to or in excess of the amount, recovered as damages in said action. [Act approved March 6, 1903.] (8th Sess. Chap. 101.)

4314. (§ 956.) *Company may deposit value of animal.*—If any corporation, association, company, person or persons, so owning, controlling, or operating any such railroad or branch thereof, shall kill or injure any animal or animals as aforesaid, and shall tender to the owner or owners thereof, or to his or their agent in that behalf, the amount which they shall deem to be the value thereof, or the damage thereto, as the case may be; or if said railroad, corporation, association, company, person or persons, shall deposit with the board of stock commissioners such amount for the owner or owners thereof; and such owner or owners, or his or their said agent shall refuse to accept the same in settlement thereof, then such owner or owners shall pay all costs incurred in any action instituted, after such tender or deposit, to recover such value or damage, unless he or they shall recover therein more than the amount so tendered as aforesaid.

4315. *Recovery by the Secretary of the State Board of Stock Commissioners.*—That where live stock are killed by railroad corporations in violation of Section 4308 (950) of the Civil Code, as amended by Chapter 29, Laws of 1905, in the event the owner of any such live stock shall not claim or assert claim against any such railroad or railroad corporation for the value of the live stock so killed within six months from the date they are killed, the Secretary of the State Board of Stock Commissioners is hereby authorized to demand and receive from such railroad or railroad

company payment in damages for such live stock, and the said Board of Stock Commissioners are hereby authorized and empowered to prosecute in the name of the State, actions against such railroad or railroad companies in any court of competent jurisdiction to recover damages in the event of the failure, neglect or refusal of such railroad or railroad companies to make payment of the amount of the claim upon demand as herein provided. The money so recovered shall be paid over to the Secretary of the State Board of Stock Commissioners and shall be by him placed and held in a separate fund and disposed of as herein provided. Such money shall be held by the Secretary of the State Board of Stock Commissioners for a period of two years after the date of its receipt, and in the event that the lawful owner of the animal killed does not present and prove his claim to the net proceeds received from the animal killed within said time the same shall be paid over to the State Treasurer of the State of Montana, and be by him placed to the credit of the Stock Indemnity Fund. However, should the owner of the animal killed present and prove his claim within the time herein provided, the Secretary of the State Board of Stock Commissioners, or said Board, are hereby authorized and empowered to pay such claimant the amount of money to which he is entitled for the animal or animals so killed by any railroad or railroad company, the damages for which have been collected by the said Board of Stock Commissioners or the Secretary thereof, as provided in this Act. In all actions prosecuted for the recovery of the value of live stock killed under the provisions of this Act the plaintiff shall recover all costs. In the event the owner of any animal or animals killed has not presented his claim against the railroad or railroad company which caused the same to be killed, any settlement made or obtained by the State Board of Stock Commissioners or the Secretary thereof shall constitute a bar as against any action by the owner of such animal or animals. [*Act approved March 9, 1907.*] (*10th Sess. Chap. 183.*)

4316. (§ 957.) *Penalty for driving animal or animals upon track.*—If the owner or owners, or his or their duly authorized agent or agents, of any animal or animals heretofore mentioned, shall drive the same upon the track of any such corporation, association, company, person, or persons, with the intention to injure it or them, and such animal or animals shall be killed or injured, such owner or owners shall be liable for all injury or damage occasioned by reason of such act, and shall be punished as provided in the Penal Code

4317. (§ 958.) *Carcass and hide of animal.*—In all cases where any corporation, association, company, person or persons,

shall be liable to the owners of any animal killed as provided in this chapter, they shall be authorized to skin the same, and shall be entitled to the carcass and hide thereof, unless the owner or owners thereof shall claim the same, in which event the amount of the value thereof shall be deducted from the amount of damages which would otherwise be due. But in case such corporation, association, company, person or persons, so entitled thereto, shall take said carcass and hide, they shall skin such animal or animals and deposit the hide thereof at the station designated for keeping the book and making the entries hereinbefore provided for, during the space of sixty days, for the inspection of persons claiming to be interested therein.

4318. (§ 959.) *Regulations concerning fences.*—That any railroad corporation or lessee, person, company or corporation operating any railroad in this state which may hereafter fence their right of way, shall make crossings through their fence and over their roadbed along their right of way, every four miles thereof or as near thereat as may be practicable. [*Act approved March 2, 1893.*]

4319. (§ 960.) *Cattle guards.*—Such openings shall not be less than sixty feet in width. The said railroad company or lessee, person, company or corporation operating any railroad shall place cattle-guards on either side of the said openings, sufficient to prevent any cattle from entering upon the said right of way enclosed. [*Act approved March 2, 1893.*]

4320. (§ 961.) *Openings under trestles.*—That the said railroad company, lessee, person or company operating any railroad in addition to the said openings, shall leave unfenced any places where the said railroad runs over trestles that are sufficiently high for cattle to go underneath the same. [*Act approved March 2, 1893.*]

4321. (§ 962.) *Limitations.*—The provisions of this bill shall only apply to grazing country. [*Act approved March 2, 1893.*]

4322. (§ 963.) *Penalty.*—Any railroad corporation or lessee, person, company or corporation operating any railroad in this state violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction, shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars. [*Act approved March 2, 1893.*]

CHAPTER IV.

GENERAL REGULATIONS OF BUSINESS.

- Section 4323. Checks to be fixed to baggage.*
“ 4324. Duties of corporation.
“ 4325. Corporation to pay damage for refusal.
“ 4326. Accommodations.
“ 4327. Printed regulations to be posted.
“ 4328. Passengers refusing to pay fare.
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“ 4362. Duty to construct drains and ditches.

4323. (§ 970.) *Checks to be fixed to baggage.*—A check must be affixed to every package or parcel of baggage when taken for transportation by any agent or employe of such railroad corporation, and a duplicate thereof given to the passenger or person delivering the same in his behalf; and if such check is refused on demand, the railroad corporation must pay to such passenger the sum of twenty dollars, to be recovered in an action for damages; and no fare or toll must be collected or received from such passenger, and if such passenger has paid his fare, the same must be returned by the conductor in charge of the train and on producing the check, if his baggage is not delivered to him by the agent or employee of the railroad corporation, he may recover the value thereof from the corporation.

Rose v. N. P. R. Co., 35 Mont. 78; 88 Pac. 767. In the absence of a special contract limiting the liability of the carrier, this section would authorize the recovery of the actual value of the baggage lost.

4324. (§ 971.) *Duties of corporation.*—Every such corporation must start and run its cars, for the transportation of persons and property, at such regular times as they shall fix by public notice, and must furnish sufficient accommodations for the transportation of all such passengers and property as, within a reasonable time previous thereto, offer or is offered for transportation at the place of starting, at the junction of other railroads, and at sidings or stopping places established for receiving and discharging way passengers and freight; and must take, transport, and discharge such passengers and property at, from and to such places, on the due payment of tolls, freight or fare therefor.

4325. (§ 972.) *Corporation to pay damage for refusal.*—In case of refusal by such corporation or their agents so to take and transport any passengers or property or to deliver the same, at the regular appointed places, such corporation must pay to the party aggrieved all damages which are sustained thereby, with costs of suit.

4326. (§ 973.) *Accommodations.*—Every railroad corporation must furnish, on the inside of its passenger cars, sufficient room and accommodations for all passengers to whom tickets are sold for any one trip, and for all persons presenting tickets entitling them to travel thereon; and when fare is taken for transporting passengers on any baggage, wood, gravel, or freight car, the same care must be taken and the same responsibility is assumed by the corporation as for passengers on passenger cars.

4327. (§ 974.) *Printed regulations to be posted.*—Every railroad corporation must have printed and conspicuously posted on the inside of its passenger cars its rules and regulations regarding fare and conduct of its passengers; and in case any passenger is injured on or from the platform of a car, or on any bag-

gage, wood, gravel, or freight car, in violation of such printed regulations, or in violation of positive verbal instructions or injunctions given to such passenger in person by any officer of the train, the corporation is not responsible for damages for such injuries, unless the corporation failed to comply with the provisions of the preceding section.

4328. (§ 975.) *Passengers refusing to pay fare.*—If any passenger refuses to pay his fare, or to exhibit or surrender his ticket, when reasonably requested so to do, the conductor and employes of the corporation may put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, or near any dwelling house, on stopping the train.

4329. (§ 976.) *Officers to wear badge.*—Every conductor, baggage master, engineer, brakeman, or other employe of any railroad corporation, employed on a passenger train or at stations for passengers, must wear upon his hat or cap, or in some conspicuous place on the breast of his coat, a badge indicating his office or station, and the initial letters of the name of the corporation by which he is employed. No collector or conductor, without such badge, is authorized to demand or to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office or station; and no other officer or employe without such badge, has any authority to meddle or interfere with any passenger or property.

4330. (§ 977.) *Passenger tickets, how issued.*—Every railroad corporation must provide, and on being tendered the regular rates of fare, furnish to every person desiring a passage on their passenger cars, a ticket which entitles the purchaser to a ride, and to the accommodations provided on their cars, from the depot or station where the same is purchased, to any other depot or station on the line of their road. Every such ticket entitles the holder thereof to ride on their passenger cars to the station or depot of destination, or any intermediate station, and from any intermediate station to the depot of destination designated in the ticket, at any time within six months thereafter. Any corporation failing so to provide and furnish tickets, or refusing the passage which the same calls for when sold, must pay to the person so refused the sum of two hundred dollars.

4331. (§ 978.) *Ticket agent to be given certificate. License.*—It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers, to provide each agent who may be authorized to sell within the state, tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of

such railroad or steamboat, and shall for the information of travelers, be kept posted in a conspicuous place in the office of such agent. After the issue of such certificate as aforesaid, such agent, or superintendent, or general officer of such owners, shall, within ten days thereafter, exhibit the same to the secretary of state of the state of Montana, and at the same time shall pay to said secretary of state a license fee of one dollar, whereupon said secretary of state shall issue to such agent so presenting, said certificate, a license under the seal of the state of Montana, authorizing such agent to engage in the business of selling transportation tickets of said common carrier; and said license so issued to such agent by said secretary of state shall also be kept posted in a conspicuous place in the office of such agent, for the information of travelers and of the public. [*Act approved March 13, 1893.*]

State v. Bernheim, 19 Mont. 512; 49 Pac. 441. The sections of this code regulating the sale and redemption of transportation tickets of common carriers are constitutional.

4332. (§ 979.) *Unlawful sale of tickets.*—It shall not be lawful for any person not in the possession of such certificate and license so posted as aforesaid, to sell, barter, or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated or owned within or without the limits of this state. [*Act approved March 13, 1893.*]

4333. (§ 980.) *Penalty.*—Whoever shall violate the provisions of the second section of this act shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars and by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted. [*Act approved March 13, 1893.*]

4334. (§ 981.) *Certificate to be exhibited.*—It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell, and such license. [*Act approved March 13, 1893.*]

4335. (§ 982.) *Redemption of unused tickets.*—It shall be the duty of the owners of every railroad or steamboat situate or operated, in whole or in part, within this state, to provide for the redemption, under reasonable precautions, of the whole, or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser for any reason

other than the expiration of the time limited in said ticket for the use thereof, has not used, at cost, in case of the ticket not used, and in case of a coupon of a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; *Provided*, That such ticket, or coupon, or coupons, shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired; and the deposit of such ticket, or part of ticket in the postoffice, addressed to any such agent, with postage thereon duly prepaid, before the expiration of the time limited on such ticket or part of ticket, shall be deemed such presentation; and the sale by any person of such ticket, or of the unused portion of any such ticket or coupon, or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this act, and any person guilty of such violation shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted: *Provided, however*, That when any ticket selling agent so licensed as aforesaid or any common carrier subject to the provisions of this act shall sell, barter or transfer to any person any mileage book or commutation tickets or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket or excursion ticket shall by the terms thereof be limited in respect of the time in which the same shall be used, then, and in that case, such mileage book, commutation ticket or excursion ticket shall not be redeemed by said common carrier subject to the provisions of this act. [*Act approved March 13, 1893.*]

4336. (§ 983.) *Penalty*.—Any railroad company or steamboat company which shall by any of its authorized ticket selling agents within this state, unreasonably refuse to redeem any coupon of a ticket, or any ticket as required by § 4335 (982) of this act, shall pay to the state of Montana, a fine not exceeding five hundred dollars for each offense. [*Act approved March 13, 1893.*]

4337. (§ 984.) *Discrimination in charges forbidden*.—It is hereby declared to be unlawful for any ticket selling agent so authorized and licensed as aforesaid, or for any common carrier subject to the provisions of this act, to charge, demand, collect or receive from, to sell, barter, transfer or assign to, any person or persons, firm, company, corporation or association, any ticket or tickets of any class whatever entitling the purchaser

or holder thereof to transportation by the common carrier issuing such ticket or tickets, for a greater or less sum or price than is charged, demanded, collected or received by such ticket selling agent or common carrier subject to the provisions of this act, for a similar ticket or tickets of the same class. Any person, ticket selling agent or common carrier subject to the provisions of this act who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum not exceeding one thousand dollars for each offense. [*Act approved March 13, 1893.*]

4338. *Size and equipment of caboose.*—It shall be unlawful for any person, corporation or company operating any railroad or railway in this state to require or permit the use of any caboose cars, unless said caboose cars shall be at least twenty-four feet in length, exclusive of platforms, and shall be provided with a door in each end thereof, and with suitable water closets, cupolas, platforms, guard rails, grab irons and steps for the safety of persons in alighting or getting on said caboose cars, and said caboose cars shall be equipped with at least two, four wheel trucks. [*Act approved February 28, 1907, § 1.*] (*10th Sess. Chap. 54.*)

4339. *Penalty.*—Any person, corporation or company operating any railroad or railway in this state, violating any of the provisions of § 4338 (1), of this Act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than Five Hundred Dollars (\$500.00), nor more than One Thousand Dollars (\$1000.00), for each offense. [*Act approved February 28, 1907, § 2.*] (*10th Sess. Chap. 54.*)

4340. *Telephones must be maintained in offices of railroad, telegraph and express companies.*—It is hereby made the duty of every railroad, telegraph and express company, doing business in the State of Montana, to install or allow to be installed in its ticket office, public office and freight office, in all cities and towns in this state, where they are, at the time, one or more public telephone exchanges, a telephone of each public telephone exchange in said city or town and to maintain in each of said offices, direct telephone connection with each of such exchanges; but nothing herein contained shall be construed to require said railroads, telegraph or express company to build a telephone line, it being intended to require such company or companies to install or allow to be installed, a telephone in each of its offices where it can be obtained by them as they may be obtained for other business offices in the same vicinity; each railroad, telegraph and express company shall cause to be promptly answered, all calls made over such telephone connection during business hours, *provided, however* that such Railroad, Telegraph and Express Companies shall not, in the absence of an agreement to the effect,

be required to bear the expense incident to the installation of said telephones, or to any charges for the use thereof. Over such telephone connection, such railroad, telegraph or express company shall cause prompt and correct replies to be made to all reasonable and proper inquiries over such connection during business hours, concerning the passenger, freight or telegraph service of such railroad, telegraph or express company. [*Act approved March 9, 1907, § 1.*] (*10th Sess. Chap. 182.*)

4341. "*Business hours*" defined.—The term "business hours" as used in this Act shall be construed to mean such times as the office or depot of such railroad, telegraph or express company may be open, with an officer or agent of such railroad, telegraph or express company in charge for the transacting of business. [*Act approved March 9, 1907, § 2.*] (*10th Sess. Chap. 182.*)

4342. *Penalty*.—Any railroad, telegraph or express company failing or refusing to comply with the provisions of this Act after its passage and approval by the Governor, shall be deemed guilty of a misdemeanor. [*Act approved March 9, 1907, § 3.*] (*10th Sess. Chap. 182.*)

4343. *Duty to furnish shipping facilities*.—It is hereby made the duty of every person, corporation and association operating a railroad in the State of Montana to maintain facilities for shipment and delivery of freight, and to ship and deliver freight and accomodate passengers at any point upon the line of such railway where there is a platted townsite of record having not less than one hundred inhabitants. [*Act approved February 21, 1905, § 1.*] (*9th Sess. Chap. 26.*)

4344. *Penalty*.—Any such person, corporation or association which shall within sixty days after written request of not less than fifty inhabitants of such platted townsite fail to comply with the provisions of this Act, shall upon conviction be fined not less than ten dollars nor more than one hundred dollars for each day thereafter, so long as the provisions of this Act are not complied with. [*Act approved February 21, 1905, § 2.*] (*9th Sess. Chap. 26.*)

4345. *Duty to report delayed passenger trains*.—All Railway Corporations operating in the State of Montana, shall, upon the arrival of a delayed passenger train, at the first division terminal, within the confines of this State, notify by telegraph every station on the line of road within the State, how much the said passenger train is delayed. And upon the arrival of such delayed passenger train, at each succeeding division terminal, it shall be the duty of the dispatcher, or telegraph operator at each of such terminals to notify every telegraph station on the line of road within the State, not yet reached by said train, how late said train is. [*Act approved March 5th, 1903, § 1.*] (*8th Sess. Chap. 65.*)

4346. *Posting notice of arrival.*—Every operator, agent or person in charge of the telegraph station, shall post a notice in a conspicuous place in the Station or waiting room, and when such telegraph station is connected by telephone with the Central Exchange in any town or city, he shall promptly notify such Central Exchange, how late the delayed passenger train is running. [Act approved March 5th, 1903, § 2.] (8th Sess. Chap. 65.)

4347. *Penalty for agent's neglect.*—Every operator, agent, or person in charge of a telegraph station who shall fail, neglect or refuse to post said notice correctly, advise such central telephone exchange shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding twenty-five dollars. [Act approved March 5th, 1903, § 3.] (8th Sess. Chap. 65.)

4348. *Violation by company. Penalty.*—Any Railway Corporation that shall violate the provisions of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed one hundred dollars, for each and every offense [Act approved March 5th, 1903, § 4.] (8th Sess. Chap. 65.)

4349. *Passenger rate of three cents per mile.*—It shall be unlawful for any railroad or railway company operating wholly or in part in the State of Montana, or any of the officers or employees thereof, to charge or receive, from any person who is to be conveyed or transported on any of the lines of any such railroad or railway companies from any point within this State, to another point within this State, a sum exceeding three (3) cents per mile for the distance to be travelled by such person, nor shall any excess fare greater amount than ten cents be charged or collected from any passenger with promise of rebate or refund of such excess, and that for children between the ages of five (5) and twelve (12) years, not more than one-half of the rate named in Section 1 shall be charged, and that children under five (5) years of age, when accompanied by parent or guardian, shall be transported free of charge; *provided*, that no railroad or railway company, or the officers or employees thereof, shall be obliged to accept a single fare for a sum less than (5) cents; *provided* that any such railroad or railway company shall not be precluded from selling mileage books at a rate less than three cents per mile. All persons shall have equal right to purchase such mileage books. That all charges for fares shall end in the figures 0 or 5 and such figures shall be the one nearest to the fare computed under the provisions of this Act. [Act approved March 4, 1905, § 1.] (9th Sess. Chap. 87.)

4350. *To what lines applicable.*—The provisions of Section 1 of this Act shall not apply to independent lines of railroads or railways operating wholly within the State of Montana upon

which a rate in excess of three (3) cents per mile is now charged, until such time as the State Legislature, or other State Officers, having power under the laws of Montana to name passenger rates, shall, in their judgment, deem the rate so charged to be excessive. [*Act approved March 4, 1905, § 2.*] (9th Sess. Chap. 87.)

4351. *Penalties.*—Any railroad or railway company, or any officer or employee thereof, who shall violate any of the provisions of this Act shall, upon conviction thereof, be fined in any sum not less than \$50.00 nor more than \$500.00. [*Act approved March 4, 1905, § 3.*] (9th Sess. Chap. 87.)

4352. *Party injured to share fine.*—In any and all cases wherein a conviction is secured for a violation of any provision of this Act, the party injured shall be entitled to receive one-half of all fines imposed and collected, and the remaining one-half of such fines imposed and collected shall be paid in to the school fund of the city in which the action is prosecuted. [*Act approved March 4, 1905, § 4.*] (9th Sess. Chap. 87.)

4353. *Tunnel charges prohibited.*—It shall be unlawful for any person, association or corporation operating, leasing or owning a railroad in the State of Montana, to accept, demand or receive any tunnel charges, or to accept, demand or receive any extra mileage, or any extra compensation for or on account of any Tunnel through which said line of Railroad may run. *Provided* that none of the provisions of this Act shall apply to rates or charges for travel to or from points outside of the State of Montana. [*Act approved February 26th, 1901.*] (7th Sess. 164-5.)

4354. *Same. Penalty.*—Any person, association or corporation, agent or manager, who shall violate any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than \$200 nor more than \$1000 for each offense [*Act approved February 26th, 1901.*] (7th Sess. 165.)

4355. *Confiscation of coal by railroad prohibited.*—It shall hereafter be unlawful for any person, railway company or common carrier to confiscate or take for his or its own use or for the use of another any coal or other fuel in transit, except when such coal, or other fuel, is necessary for the preservation of life or property or is required for the moving of trains of such common carrier, *provided* that in a suit under this Act to recover the penalty and damages the burden of proof shall be on the person, railroad company or common carrier confiscating the coal or other fuel to show that such coal or other fuel was necessary for the preservation of life or property or was required for the moving of trains of such common carrier. [*Act approved March 6, 1907, § 1.*] (10th Sess. Chap. 119.)

4356. *Liability of railroad company.*—Any person, railroad company or common carrier who shall confiscate or take any coal or fuel either for his or its own use or for the use of another shall be liable to the consignee or owner of such coal, or fuel, in double the value of such coal, or fuel, at the point of shipment, and such other damages as may be caused by the confiscation of such coal. Such liability to be exclusive of and in addition to any and all charges for the transportation of such coal or fuel, which charges for the transportation shall be paid by the party confiscating such coal, or fuel. But in every case wherein coal or other fuel is taken or used by any such person, railroad company or common carrier, it shall be the duty of such person, railroad company or common carrier to notify the consignee by telegram or letter, immediately, of the taking of such coal and to pay and compensate him therefor within thirty days from the time of the taking. [Act approved March 6, 1907, § 2.] (10th Sess. Chap. 119.)

4357. *Penalties for violation of act.*—Any person, corporation or common carrier who shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars, nor more than two hundred dollars. [Act approved March 6, 1907, § 3.] (10th Sess. Chap. 119.)

4358. *Obstruction of highway crossings by railroads.*—That it shall hereafter be unlawful for any corporation, association or company, to wilfully obstruct, blockade, interfere with or prevent the free use of any public highway within the State of Montana, where such highway crosses any railroad track outside of incorporated cities and towns, by stopping any railroad train, car, engine or locomotive for more than fifteen minutes at any one time, or by placing, depositing or leaving any article or thing, whatsoever, on any railroad track at the point where any public highway crosses such track outside of incorporated cities, and towns, and any corporation, association or company, so obstructing, blockading or interfering with the free use of any such highway, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five (\$25.00) dollars, nor more than one hundred (\$100.00) dollars. This Act shall not be construed as repealing any existing laws prohibiting encroachments upon, or obstruction of, public highways. [Act approved February 26, 1907.] (10th Sess. Chap. 43.)

4359. *Trains to come to full stop at grade crossings.*—That no Railway Company operating trains within this State shall permit any locomotives or cars to cross the tracks of any other railroad, at grade, without coming to a full stop immediately before crossing; provided, however, that if any Railway Company, or

Companies, using one or more tracks crossing each other or connecting, in any way, at a common grade, shall, by an interlocking plant, signal station, or any other works or fixtures, to be erected by them, or either of them, render it safe to pass over said crossings without stopping, and such plant, works or fixtures shall have been first approved by the County Commissioners of the County wherein such works are to be constructed and used, and the plans of such works and fixtures for such crossing, designating the place of such crossing, shall have been filed with such Commissioners, then and in that case the foregoing provisions of this section, requiring the stopping of trains at such crossing, shall not apply to said companies, or either of them; and, if said County Commissioners shall disapprove any such plans so filed with them, or fail to approve the same within twenty (20) days after the filing thereof with them, such railway companies, or either of them, may apply, in the County where such crossing is situated, to the District Court in and for said County, or to a judge thereof in vacation, by petition in writing setting forth the object of such application, and said court or judge shall, thereupon, appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon said County Commissioners at least ten (10) days before the day appointed for said hearing, and said District Court, or a judge thereof in vacation, shall have full power, upon the hearing of said petition, to grant the prayer thereof, or to make such other order thereon as may be proper in the premises, and the foregoing provisions of this section, requiring the stoppage of trains at crossings, shall not apply to said railway companies, or either of them, if said District Court shall, by its order upon said petition, grant the prayer thereof or otherwise and to any extent approve the construction and use of the interlocking plant or other structures therein referred to. [*Act approved February 17th, 1903.*] (8th Sess. Chap. 8.)

4360. *Fire guards.*—That every railroad corporation operating its lines of road or any part thereof within this State, shall, between the fifteenth day of April and the first day of July in the year 1903 and each succeeding year thereafter, plough in a good and workmanlike manner, covering the sod well, upon each side of its line of road wherever it passes through a range or grazing country, a continuous strip of not less than six feet in width on each side of its track, as a fire-guard, which said strip shall as near as practicable run parallel with the line or lines of said railroad, and in addition to such ploughing, said railroad company shall cause to be burned between the fifteenth day of July and the fifteenth day of September of each year, all the grass and vegetation between the said ploughed strips and a

line of fifty (50) feet inside said ploughed strips; *Provided* that such fire guard so ploughed and burned need not be constructed within the limits of any town, village or city nor in private fields under cultivation nor along the line of such railroad whenever the same runs through the mountains or elsewhere where such ploughing or burning would be impracticable; *and provided further*, that said fire guard or portion thereof, need not be ploughed or burned on or through any lands which may be released from the operation of this act by the Board of County Commissioners of the county wherein such land is situated by their written certificate of release filed in the office of the County Clerk of the said County; *provided further*, that said ploughing be not less than three hundred (300) feet from the center of the railroad track on each side of same. Except in cases of cultivated fields and then such ploughing and burning shall be done closer to such railroad but not less than seventy feet from the center of the track. [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 63.)

4361. *County commissioners may plough guard and recover expense.*—That if any railroad company fails to comply with any of the provisions of Section 1 of this Act the Board of County Commissioners of the County wherein such violation occurs shall cause the neglected ploughing or burning or both therein provided for, to be done, and may in a suit to be brought in their name, as said board, in the District Court, having jurisdiction, recover double the amount of the cost of such ploughing or burning or both with reasonable attorney fees to be fixed by the Court, and such railroad company shall be liable further for all damages caused by its failure to comply with this act. [Act approved March 5th, § 2.] (8th Sess. Chap. 63.)

4362. *Duty to construct drain and ditches.*—It shall be the duty of every corporation, company, or person owning or operating any railroad, or branch thereof, in this State, and of any corporation, company, or person constructing any railroad in this State, within three months after the completion of the same through any county in this State, to cause to be constructed and maintained suitable ditches and drains along each side of the road bed of such road or to construct culverts or openings through such road bed to connect with ditches or drains, or water courses, so as to afford sufficient outlet to drain and carry off the water along such railroad whenever the draining of such water has been obstructed or rendered necessary by the construction of such railroad; *provided* that none of the drains or ditches herein referred to shall be required to be constructed by any of the persons or corporations herein named or described, except when required to remove and drain off water accumulated upon property adjacent to or upon the right of way whose natural channel or

outlet has been destroyed or impaired by the embankment of such railway so constructed as aforesaid. And in case such corporation, company or person shall fail or neglect to construct and maintain such ditches or drains as are herein required, within the time limited in this Section, the Board of County Commissioners of any County, through which such railroad has been, or may be constructed and located and in which the draining herein required has been neglected, are hereby authorized and required, upon the petition of twenty land owners of such County along the line of and contiguous to such railroad, to cause such ditches or drains as are herein required to be constructed and maintained, and said Board of County Commissioners may maintain an action against such corporation, company or person so failing to comply with the provisions of this Section, in any Court of competent jurisdiction, in the name of such County, and shall be entitled to recover all costs and expenses incurred in the construction and maintenance of said drains or ditches. [*Act approved March 6, 1903.*] (8th Sess. Chap. 101.)

CHAPTER V.

BOARD OF RAILROAD COMMISSIONERS.

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4363. *Creation of commission.*—There is hereby created and established a Board of Railroad Commissioners of the state of Montana, to be known as the “Board of Railroad Commissioners of the State of Montana,” said Board to consist of three members who shall be qualified electors of the state. The first Board of Railroad Commissioners shall be composed of the following persons, namely: B. T. Stanton of Gallatin County; Nathan Godfrey of Lewis and Clark County and E. A. Morley of Silver Bow County. The persons named herein as commissioners shall serve until the first Monday of January, 1909, or until their successors are elected and qualified. At the general election to be held in November, 1908, there shall be elected three commissioners for said Board; one for a term of two years; one for a term of four years, and one for a term of six years, and until their successors are elected and qualified. Said commissioners when elected will qualify at the time and in the manner provided by law for other state officers, and shall take office on the first Monday of January, next after their election. Each of said members of said Board so elected shall serve until his successor is elected and qualified. Biennially thereafter, at the general election, one member shall be elected for a period of six years, and until his successor is elected and qualified, to succeed the member of such Board whose term shall expire on the first day of January following. Any vacancy occurring in the Board shall be filled by appointment by the Governor, and such appointee shall hold office until the next general election, and until his successor is elected and qualified. At the biennial election following the occurrence of any vacancy in the Board, there shall be elected one member to fill out the unexpired term for which such vacancy

exists. No person in the employ of, or holding any official relations to any railroad or owning any stocks, bonds or other securities of any railroad, or who is, or shall become in any manner pecuniarily interested in any railroad, or in any stocks, bonds or other securities thereof, shall be a member of said Board. Any member of said Board who, after his election or appointment to office, or after his induction into office, shall become an employe of, or holder of any official relation to any railroad, or who shall become an owner or holder of any stocks, bonds or other securities of any railroad, or have or acquire any pecuniary interest in any stocks, bonds or other securities of any railroad, shall forfeit his office, and the Governor shall appoint a successor thereto as herein provided in case of a vacancy in said Board. No Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. [*Act February 26, 1907, § 1.*] (10th Sess. Chap. 37.)

4364. *Oath and bond.*—Each member of said Board, and each person appointed to office by said Board, before entering upon the duties of his office, shall take and subscribe the oath specified in Section one, Articles XIX, of the Constitution of the State of Montana, and such oath shall be filed in the office of the Secretary of State. The members of said Board and the Secretary thereof, shall each give at the same time a bond to the state in the sum of Twenty-five Thousand Dollars, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of their respective offices. [*Act February 26, 1907, § 2.*] (10th Sess. Chap. 37.)

4365. *Meeting of board. Quorum.*—The office of the Board shall be in the city of Helena, and said office shall always be open during business hours, legal holidays and non-judicial days excepted. The Board shall hold sessions at least once each month in the city of Helena, and at such other times and such other places within this state as may be expedient. The sessions of the Board shall be public. A majority of the Board shall constitute a quorum for the transaction of all business. The members of the Board of Railroad Commissioners shall have the authority to administer oath and affirmations. The Board shall have power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under the law. [*Act February 26, 1907, § 3.*] (10th Sess. Chap. 37.)

4366. *Seal.*—The Board shall have a seal, and such seal shall have the following words engraved thereon: "Board of Railroad Commissioners of the State of Montana," and said seal shall be affixed only to: First, writs; second, authentications of a record or other proceeding, or to a copy of a document on file in the

office of the said Board. The courts of this state shall take judicial notice of such seal. [*Act February 26, 1907, § 4.*] (*10th Sess. Chap. 37.*)

4367. *Officers of board.*—The Board shall, immediately after its members have qualified, organize by electing one of its members as chairman, and shall appoint a secretary, who shall possess the same qualifications as members of said Board, to serve during the pleasure of the Board. Said Board shall also have the power to appoint stenographers, inspectors, experts, and other persons whenever deemed expedient or necessary by said Board to the proper performance of its duties. [*Act February 26, 1907, § 5.*] (*10th Sess. Chap. 37.*)

4368. *Salaries.*—The salary of each commissioner shall be Four Thousand Dollars per annum; the salary of the Secretary shall be Three Thousand Dollars per annum; and the salary of the stenographer employed by the Board shall be fixed and determined by the Board, and shall not exceed the sum of Twelve Hundred Dollars per annum. The salaries of the persons so employed shall be paid as other expenses of the Board are paid. The salaries of the Commissioners and Secretary shall be paid from the State Treasury in equal quarterly payments, payable April 1st, July 1st, October 1st, and January 1st. [*Act February 26, 1907, § 6.*] (*10th Sess. Chap. 37.*)

4369. *Expenses of board and employes.*—Said commissioners and the persons in their official employ, when traveling in the performance of their official duties, shall have a right to free transportation, and to have their actual and necessary traveling expenses paid, the amounts to be passed on by the State Board of Examiners and paid as other expenses of the Board. The State shall furnish said Board with suitable offices in the State Capitol Building at Helena, Montana, and provide it with all necessary furniture, stationery and printing, upon requisitions signed by the Chairman of said Board. [*Act February 26, 1907, § 7.*] (*10th Sess. Chap. 37.*)

4370. *Same.*—Said Board shall also be allowed the sum of One Thousand Dollars per annum for postage, expressage and other incidental expenses. The accounts for payments authorized by this section shall be paid only when audited by the State Board of Examiners, and the Board shall file, with its vouchers for such payments, a statement, verified by a member of the Board, showing the names of all persons employed and the purpose for which they were employed, and the work performed by them. [*Act February 26, 1907, § 8.*] (*10th Sess. Chap. 37.*)

4371. *Duties of secretary.*—The Secretary shall keep a full and complete record of all proceedings of the Board, and be the custodian of its records, and file and preserve at the office of the Board all books, maps, documents and papers entrusted to his

care, and be responsible to the Board for the same. He shall perform such other duties as the Board may prescribe. [*Act February 26, 1907, § 9.*] (*19th Sess. Chap. 37.*)

4372. *Process to compel attendance and examination of witnesses.*—The process issued by said Board shall be under seal and extend to all parts of the state. Said Board shall have power to issue process in like manner as courts of record. Such process may be served by any person authorized to serve of courts of record, or by any person appointed by the Board for such purpose. In the event the process issued by the Board is a subpoena for the attendance of a witness, and he shall have failed, neglected or refused to obey the same, the Board is hereby authorized to file a petition with any District Court in the State, setting up the facts and the necessity of having such witness appear in such trial, and the Court shall thereupon summarily direct that a subpoena be issued out of the Court requiring the attendance of any person or persons as a witness before the Court; and the Board shall thereupon have the power and authority to examine such witness before said Court, under oath, respecting any inquiry or investigation being made by said Board, under and pursuant to the provisions of this Act. The Court shall likewise when any petition is filed stating the necessity therefor order the production by any person or corporation, for examination in said Court, any books, papers, records or files necessary or pertinent to any inquiry or investigation then being made by said Board [*Act February 26, 1907, § 10.*] (*10th Sess. Chap. 37.*)

4373. *Definitions and terms.*—The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, and shall apply to railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and to any shipments of property made from any point within this state to any other point within this state, whether the transportation of the same shall be wholly within this state, or partly within this state and partly within an adjoining state or states. The term "transportation" shall include all instrumentalities of shipment or carriage. The term "railroad" shall be taken to mean any corporation, company or individual owning or operating any railroad, in whole or in part, in this state. It shall also include express companies and sleeping car companies. The term "Board" in this act shall be taken to mean the Board of Railroad Commissioners of the State of Montana. The provisions of this act shall apply to all persons, firms or companies, incorporated or otherwise, that shall do business as common carriers upon any of the lines of railroad in this state. [*Act February 26, 1907, § 11.*] (*10th Sess. Chap. 37.*)

4374. "*Railroad.*"—The word "railroad," whenever used in this act shall be held to mean and include railroad companies, express companies, car companies, sleeping car companies, freight and freight line companies, and all common carriers. [Act February 26, 1907, § 12.] (10th Sess. Chap. 37.)

4375: *Power of board to fix rates, schedules and classifications.*—The power and authority is hereby vested in the said Board, and it is hereby made its duty to adopt as soon as practicable after the organization of the Board, all necessary rates, charges and regulations to govern and regulate freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different rail roads in this state, and to make the same effective by enforcing the penalties prescribed in this Act. The said Board shall have the power, and it shall be its duty, to fairly and justly classify and subdivide all freight and merchandise of whatsoever character that may be transported over the railroads of this state, into such general and special classes or subdivisions as may be deemed necessary or expedient. The said Board may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. Said Board shall also have the power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight, and cars that may pass over two or more lines of such railroads. The rates, tolls or charges on any property which shall for any reason remain unclassified by the Board shall not in any event exceed the highest rates fixed for any classification by said Board. And it shall be within the province of the Board to entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the State of Montana or any point therein in the way of rates for the transportation of freight or passengers from points without the State to points within the State and vice versa; and in proper cases, where it appears that the United States Inter-State Commerce Commission Law has been violated, it is hereby made the duty of said Board to make complaint to the Inter-State Commerce Commission of the United States and to aid such Commission in any investigation it may make concerning violations of the United States Law, by furnishing evidence, and in any other manner which may seem best suited to enforce both the United States and State Law, and to protect the interests of the people. [Act February 26, 1907, § 13.] (10th Sess. Chap. 37.)

4376. *Making schedules effective.*—When any schedules shall have been made or revised, it shall be the duty of said commis-

sioners to cause notice thereof to be published for two successive weeks in some newspaper published in the city of Helena, which notice shall state the date of taking effect of said schedule, and said schedule shall take effect at the time so stated in such notice, and a printed notice of such schedule shall be conspicuously posted by such common carrier in each freight office, and passenger depot upon its lines; *provided*, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the railroad commissioners to publish ten days' notice in two daily papers, one of which is published in the city of Helena, setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classification; and they shall at such time and place, and as soon as practicable, afford to any person, firm, corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said railroad commissioners on the subject of determining and fixing such maximum rates and classification. All classifications and rates fixed and established by the Board shall become effective twenty days after the railroad affected thereby shall have received certified copies thereof from said Board. Each railroad affected by the provisions of this act shall display in a conspicuous place in each of its stations in this state, a schedule printed in plain legible English type, showing all classifications and rates fixed and established by the said Board. Any failure or refusal on the part of any railroad to comply with the provisions of this section shall subject such railroad to a penalty of not less than One Hundred Dollars, nor more than Five Hundred Dollars for each day that such failure or neglect is continued. [*Act February 26, 1907, § 14.*] (10th Sess. Chap. 37.)

4377. *Power to alter classification or rate. Hearing complaint.*—The said Board shall have the power from time to time to change, alter, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classifications or rates shall be put into effect in the same manner as original classifications or rates. The said Board shall make and establish reasonable rates for the transportation of passengers over each and all of the railroads subject hereto, and shall prescribe rates, tolls, and charges for all other services performed by any railroad subject hereto. The said Board must, within forty days after the filing with such Board of a complaint by a shipper, or other person interested, proceed to investigate and determine the justness and reasonableness of any classification, rate, charge, toll, regulation or order made by said Board. [*Act February 26, 1907, § 15.*] (10th Sess. Chap. 37.)

4378. *General powers of board.*—The Board shall have the general supervision of all railroads, express companies, car com-

panies, sleeping car companies, freight and freight line companies, and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said Board and within its power and authority under the provisions of Act; and shall investigate any alleged neglect or violation of the laws of the state by any railroad or other company above specified doing business therein or by the officers, agents, or employes thereof. The Board shall also have the power and authority, and it shall be its duty, to examine and inspect, or cause to be examined and inspected, under its authority, all books, records, files and papers of the persons and companies specified above, in so far as the same may be pertinent to any matter under investigation before said Board and to hear and take testimony in the progress of any inquiry or investigation authorized by this act. [Act February 26, 1907, § 16.] (10th Sess. Chap. 37.)

4379. *Investigation into accidents.*—The said Board or some members thereof, to be deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any railroad in this state, resulting in death or injury to any person, of such gravity as to require the attention of a physician or surgeon, or in the destruction of property greater in value than Two Thousand Dollars. The testimony taken on any such hearing shall be transcribed and filed in the office of the Board. [Act February 26, 1907, § 16a.] (10th Sess. Chap. 37.)

4380. *Duty of railroad company to report accidents.*—It is hereby made the duty of every railroad company operating any line of railroad within this state, promptly upon the occurrence or in connection with the operation of its line within the state, of any accident such as is mentioned in the next preceding section, to report the same to the Board of Railroad Commissioners, in which report shall be stated the time and place of the accident, the names of the persons killed or injured, and the value of any property destroyed. [Act February 26, 1907, § 17.] (10th Sess. Chap. 37.)

4381. *Witnesses; compensation; immunity.*—The said Board in making any examination or investigation provided for in this act, shall have the power to issue subpoenas for the attendance of witnesses, by such rules as they may prescribe. Each witness shall receive the sum of Three Dollars per day, together with the sum of five cents per mile traveled by the nearest practicable route in going to and returning from the place of meeting of said commission. And no witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. No person shall be excused from attending or testifying, or producing any books, papers, documents, or any thing or things, before any court or magistrate, or commissioner

or board, upon any investigation, proceeding or trial under the provisions of this Act or for any violation of any of them, upon the ground or for the reason that the testimony or evidence documentary or otherwise required of him, may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify, or produce evidence; and no testimony or evidence so given or produced shall be received against him upon any civil or criminal proceeding, action or investigation. [*Act February 26, 1907, § 18.*] (*10th Sess. Chap. 37.*)

4382. *Powers to compel railroad companies to provide adequate accommodations and service.*—The Board shall have the power, and it shall be its duty, to compel any and all railroads subject hereto, to provide, maintain and operate sufficient train service, both freight and passenger for the proper and reasonable accommodation of the public, and to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations. [*Act February 26, 1907, § 19.*] (*10th Sess. Chap. 37.*)

4383. *Attorney general as attorney for board.*—The Attorney General is hereby constituted the attorney and counselor of said Board, and the county attorney of every county in the state, shall, on the request, and at the direction of the Attorney General, assist in all cases, proceedings and investigations undertaken by said Board under this law, in his own county; *provided*, that said Board shall have power and authority to employ special counsel, with the consent and approval of the Attorney General to assist in any case, matter, proceeding or investigation instituted under this law. It is hereby made the duty of the Attorney General, upon direction of said Board, and of the County Attorney of each county in this state, upon direction of the Attorney General, to institute and prosecute, and to appear and defend, any action or proceeding arising under the provisions of this law. All suits and proceedings filed in any court of this state, under the provisions of this law, shall have precedence over all other business in such court, save and except criminal business and original proceedings in the Supreme Court. The fees and expenses of additional counsel shall be fixed and determined by the State Board of Examiners, and allowed and paid as items of expense the same as other items of expense of said Board of Railroad Commissioners. [*Act February 26, 1907, § 20.*] (*10th Sess. Chap. 37.*)

4384. *Court review of action of board. Pleadings.*—Actions to review the determination of the Board fixing any classification, rate, toll, charge, regulation, or order, or the refusal of said Board to make, fix or establish any classification, rate, toll, charge, regulation or order, shall be commenced in the District Court of

the county having jurisdiction thereof by the filing of a complaint, duly verified as provided for the verification of pleadings in civil actions, and notice may be served upon the party defendant, either by summons issued and served as provided for in the Code of Civil Procedure in civil actions, or the Court may issue an order directed to the defendant requiring him to answer the complaint at such time as the court may deem reasonable; *provided, however*, that such time shall not be less than five days from the time of the service of such order. Upon the appearance of the defendant, he may deny or admit the facts set forth in said complaint, by answer, which shall be verified as the pleadings in other civil actions. If upon the hearing the Court shall find that the rates fixed or the classifications made are unjust and unreasonable, it shall thereupon be the duty of said Board to make new rates or a reclassification, as the case may be. All orders or notices required under the provisions of this section may be issued by the Court, or by the Judge thereof at chambers. [Act February 26, 1907, § 21.] (10th Sess. Chap. 37.)

4385. *Prohibition against rebates and discrimination.*—If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, shall charge, demand or receive from any person, firm or corporation, a greater or less compensation for any service rendered, or to be rendered, in the transportation of property subject to the provisions of this act, than that fixed by the said Board of Railroad Commissioners for such service, such railroad shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana not less than Five Hundred, nor more than Two Thousand Dollars for each offense; *provided*, that nothing herein shall be so construed as to prevent any railroad or railroad corporation from giving excursion rates to or from any point within or without the State. [Act February 26, 1907, § 22.] (10th Sess. Chap. 37.)

4386. *Discrimination.*—If any railroad subject to this act, or its agents or officers, shall hereafter collect, charge, demand or receive from any person, company, firm or corporation, a greater rate, charge or compensation than that fixed and established by the said Board of Railroad Commissioners for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight car, or for any other service performed, or to be performed by it, such railroad and its agents and officers shall be deemed guilty of extortion, and shall forfeit and pay to the state of Montana a sum not less than Five Hundred Dollars, nor more than Two Thousand Dollars. [Act February 26, 1907, § 23.] (10th Sess. Chap. 37.)

4387. *Jurisdiction to enforce orders of board.*—The District Court shall have jurisdiction to enforce by proper decree, injunc-

tion or order, the rates, classifications, rulings, orders and regulations made or established by the commission. The proceeding therefor shall be by equitable action in the name of the state, and shall be instituted by the Attorney General or County Attorney, whenever advised by the Board that any railroad is violating or refusing to comply with any rule, order, rate, classification or regulation made by the commission and applicable to such railroad. Such proceedings shall have the precedence over all other business in such courts, except criminal business. In any action the burden of proof shall rest upon the defendant, who must show by clear and satisfactory evidence that the rule, order, regulation, rate or classification involved is unreasonable and unjust as to them. If in such action, it be the decision of the Court that the rule, regulation, order, rate, or classification is not so unreasonable or unjust, and that in refusing compliance therewith the railroad is thereby failing or omitting the performance of any duty, debt, or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to, and compliance with the rule, regulation, order, rate or classification by the defendant, and its officers, agents, servants and employes, and may grant such other relief as may be deemed just and proper. Any violation of such decree shall render the defendant and officer, agent, servant or servants or employe of the defendant, who is in any manner instrumental in such violation, guilty of contempt, and shall be punishable by a fine not exceeding One Thousand Dollars for each offense, or by imprisonment of the person guilty of contempt until he shall sufficiently purge himself therefrom, and such decree shall continue and remain in effect and be in force until the rule, regulation, order, rate or classification shall be modified or vacated by the Board. *Provided, however,* that nothing herein contained shall be construed to deprive either party to such proceedings of the right to trial by jury, as provided by the seventh amendment to the Constitution of the United States, or as provided by the Constitution of this state. An appeal shall lie to the Supreme Court from the decree in such action, and the cause shall have precedence over all other civil actions of a different nature pending in the Supreme Court. [Act February 26, 1907, § 24.] (10th Sess. Chap. 37.)

-4388. *Same. Appeals.*—Appeals may be taken to the Supreme Court from the judgment of any District Court in any action brought under the provisions of this act; such appeals shall have precedence over all other business, except criminal business, and original proceedings in such Court, and shall be heard and determined as are appeals in civil actions. [Act February 26, 1907, § 25.] (10th Sess. Chap. 37.)

4389. *Actions to recover excess charges.*—Any sum or amount of money paid to any railroad by any person or shipper in excess of the rates, tolls, or charges fixed and established by the Board for such service, may be recovered from such railroad by the person or shipper in any action instituted and maintained in the District Court of the county in which such payment was made, *provided* such action shall be brought within twelve months from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and the said railroad, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. No voluntary payment by any person or shipper of any such excess or overcharge to any railroad shall be, or held to be a waiver on the part of such person or shipper of the right to sue and recover for such excess or overcharge, as provided for in this section. If, upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action. [*Act February 26, 1907, § 26.*] (*10th Sess. Chap. 37.*)

4390. *Actions to determine reasonableness of rates or classification.*—Any railroad may bring an action in the District Court of the county where the principal office or place of business is situated, or in any county where any such classification, rate, toll, charge, regulation or order of the Board is applicable, against the said Board as defendant, to determine whether or not any such classification, rate, toll, charge, regulation or order made, fixed or established by the Board under the provisions of this act is just and reasonable; *provided*, that until the final decision in any such action the classification, rate, toll, charge, regulation or order of the Board affecting rates or charges shall be deemed to be final and conclusive; *and provided, further*, that in any action, hearing or proceeding in any court, the classification, rate, tolls, charges, regulations and orders made, fixed and established by said Board shall *prima facie* be deemed to be just, reasonable and proper. All costs and expenses incurred in the hearing, trial or appeal of any action brought under this section, shall be fixed and assessed as by the court may seem just and equitable. [*Act February 26, 1907, § 27.*] (*10th Sess. Chap. 37.*)

4391. *Action by shippers.*—Any shipper, or other person interested, may bring an action in the District Court of the County where the principal office or place of business of such railroad is situated, or in any county where any classification, rate, toll, charge, regulation or order of the Board is applicable, against the said Board of Railroad Commissioners as defendant, to de-

termine whether or not any such classification, rate, toll, charge, regulation or order made, fixed or established by the Board under the provisions of this act is just and reasonable; *provided*, that until the final decision in any such action, the classification, rate, toll, charge, regulation or order of the Board affecting rates or charges shall be deemed to be final and conclusive; except as herein otherwise provided; *and provided, further*, that in any action, hearing or proceeding in any court, the classifications, rates, tolls, charges, regulations and orders made, fixed and established by said Board shall *prima facie* be deemed to be just, reasonable and proper. Costs shall be awarded in all actions brought under the provisions of this section as in other civil causes. [*Act February 26, 1907, § 28.*] (10th Sess. Chap. 37.)

4392. *Penalties for violation of act by railroad.*—If any railroad shall wilfully violate any provision of this act, or shall do any other act herein prohibited, or shall refuse to perform any and all lawful orders emanating from said railroad commission relating to rates and charges, or any other duty enjoined upon it, for which a penalty has not herein been provided, for every such act of violation it shall pay to the state of Montana a penalty of not more than Five Hundred Dollars. [*Act February 26, 1907, § 29.*] (10th Sess. Chap. 37.)

4393. *Recovery of penalties and forfeiture.*—All penalties and forfeitures incurred, levied and made under the provisions of this act, shall be collected by said Board of Railroad Commissioners and paid over to the State Treasurer and credited to the General fund; *provided, however*, that should the said Board fail or refuse to institute appropriate action for the recovery of any penalty or forfeiture provided for herein, for the space of sixty days after notice of the cause of complaint by such person or shipper aggrieved, such person or shipper may institute and prosecute such action in the name of the state against such railroad, in the same manner as could the said Board. [*Act February 26, 1907, § 30.*] (10th Sess. Chap. 37.)

4394. *Board not to receive favors or gratuities from railroad.*—No railroad commissioner, nor the said secretary shall, directly or indirectly, solicit or request from, or recommend to any railroad corporation, or any officer, attorney or agent thereof, the appointment of any person to any place or position. Nor shall any railroad corporation, its attorney or agent, offer any place, appointment or position or other consideration to such commissioners or either of them, nor to any clerks or employes of the commission or of the Board, neither shall the commissioners or either of them, nor their secretary, clerks, agents, employes or experts, accept, receive or request any pass from any railroad in this state, for themselves or for any other person, except as herein otherwise provided, or any present, gift or gratuity of any kind

from any railroad corporation, and the request or acceptance by them, or either of them, except as herein specified, of any such place or position, pass, presents, gifts or other gratuity, shall work a forfeit of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, and employe or employes, expert or experts, requesting or accepting the same. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by a fine of not more than Five Hundred Dollars, or imprisonment not more than six months, or by both such fine and imprisonment. [*Act February 26, 1907, § 31.*] (*10th Sess. Chap. 37.*)

4395. *Annual reports from railroads.*—The Board shall require verified annual reports from each and every railroad owning, operating or having any line of railroad in this State, prescribe the manner in which such reports shall be made, and may require specific answers to all questions upon which the Board may desire information. It shall be the duty of the president or other officer in charge of such railroad to make such report and answers to the Board. The Board may, at such other times as it may deem necessary, require such other information, statements or reports, as may be deemed necessary, and fix the time for filing of the same. Any railroad failing or refusing to make or file such annual report, or failing or refusing to furnish such additional information, statements or reports, as may be demanded by the Board, shall forfeit the sum of Five Hundred Dollars for each day that such refusal or neglect shall be continued. [*Act February 26, 1907, § 32.*] (*10th Sess. Chap. 37.*)

4396. *Annual report of the board.*—Said Board shall make and submit to the Governor annual reports containing a full and complete account of the transaction of their office, together with such facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of other departments of the state. The said report shall contain a statement as to the number of accidents investigated by the Board, as herein provided, and the number of persons killed or injured in them, and generally the causes of such accidents. [*Act February 26, 1907, § 33.*] (*10th Sess. Chap. 37.*)

4397. *Duties of board. Suspension of commission.*—It is hereby made the duty of such Board to see that the provisions of this act and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected. And said Board shall report all such violations, with the facts in their possession, to the Attorney General or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any rail-

road shall have precedence in all courts over all civil causes, original proceedings in the Supreme Court excepted. If any commissioner shall fail to perform his duties as provided for in this act, he may be removed from office as provided for by Title II, Chapter II, Part II, of the Penal Code, and upon complaint made and good cause shown, the Governor is authorized to suspend any commissioner or commissioners, and if in his judgment, the exigencies of the case require, the Governor is authorized to appoint temporarily some competent person or persons to perform the duties of such suspended commissioner or commissioners during the period of such suspension. [*Act February 26, 1907, § 34.*] (*10th Sess. Chap. 37.*)

4398. *This act not to affect existing rights of action.*—This act shall not have the affect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this state, and all penalties accruing under this act shall be cumulative to each other, and a suit for or recovery of one, shall not be a bar to the recovery of any other penalty. [*Act February 26, 1907, § 35.*] (*10th Sess. Chap. 37.*)

4399. *Appropriations.*—The sum of \$50,000.00, or so much thereof as may be needed, is hereby appropriated from moneys not otherwise appropriated, for the years 1907 and 1908 for the purpose of carrying into effect the provisions of this act. [*Act approved February 26, 1907, § 36.*] (*10th Sess. Chap. 37.*)

TITLE IX.

TELEGRAPH, TELEPHONE AND ELECTRIC POWER COMPANIES.

Section 4400. Rights of way for pole lines along streets, roads and highways.

“ 4401. *Construction and connection.*

“ 4402. *Consolidation of competing lines forbidden.*

4400. *Rights of way for pole lines along streets, roads and highways.*—A telegraph, telephone, electric light or electric power line, corporation, or a person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power and other purposes and to that end, to construct such telegraph, telephone, electric light, or electric-power line or power lines, from point to point, along and upon any of the public roads, streets and highways in the state of Montana, by the erection of necessary fixtures, including posts, piers and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets or highways and nothing herein shall be so construed as to restrict the powers of city or town councils. [*Act approved March 7, 1907.*] (*10th Sess. Chap. 192.*)

4401. (§ 1001.) *Construction and connection.*—Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines, and in case such persons or corporations can not agree as to the compensation to be paid for the privilege of such connection, the acquiring of the right by the one to use the line of the other may be had in proceedings under the Code of Civil Procedure and the damages assessed and the right of connection granted, as provided in the Code of Civil Procedure.

4402. (§ 1002.) *Consolidation of competing lines forbidden.*—No telegraph or telephone company shall consolidate with, or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph or telephone.

TITLE X.

MINING CORPORATIONS.

Section 4403. *Transfer agencies.*

“ 4404. *Stock issued at transfer agencies.*

“ 4405. *Directors not to sell property.*

“ 4406. *Proceedings and certificate of meeting of stockholders.*

“ 4407. *Corporation dissolved.*

“ 4408. *Consolidation.*

“ 4409. *Sale of property; procedure.*

“ 4410. *Dissolution upon sale.*

“ 4411. *Rights of dissenting stockholders; appraisalment.*

“ 4412. *Appeal from appraisalment.*

4403. (§ 1010.) *Transfer agencies.*—Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of its stock; and a transfer or issue of the same at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation.

4404. (§ 1011.) *Stock issued at transfer agencies.*—All stock of any such corporation issued at a transfer agency must be signed by the president and secretary of the corporation and countersigned at the time of its issue by the agent having charge

of the transfer agency. No stock must be issued at a transfer agency unless the certificate of stock in lieu of which the same is issued, is at the time surrendered for cancellation.

4405. (§ 1012.) *Directors not to sell property.*—The board of directors of any mining corporation organized under the provisions of this code, shall not have power to sell, lease, mortgage or otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators or reduction works of such corporation, unless they shall have first called a meeting of the stockholders of such corporation in the manner prescribed in § 3894 (525) of this code, for the purpose of submitting to the stockholders of such corporation the proposition to sell, lease, mortgage or otherwise dispose of the property of such corporation or some portion thereof. The notice so required to be published and sent to each stockholder shall distinctly specify each particular tract or piece of property so to be sold, leased, mortgaged or otherwise disposed of and the particular disposition to be made thereof.

Anaconda Co. v. Heinze, 27 Mont. 170; 69 Pac. 913. A proposition by the president of a mining corporation that on the deposit of a specified sum as the purchase price, the corporation will at once proceed to obtain the requisite consent of its stockholders for selling, and

will then sell and convey a specified portion of its mining claim, and the acceptance of such proposition and deposit of the money, do not give the proposed purchaser an equitable title to the mine, or right to extract ore therefrom.

4406. (§ 1013.) *Proceedings and certificate of meeting of stockholders.*—If at the time and place specified in the notice provided for in the preceding section, stockholders shall appear in person or by proxy, representing not less than three-fourths of all the shares of stock of the corporation; they may organize by choosing one of their number chairman of the meeting, and also a suitable person for secretary, and proceed to vote on the proposition mentioned in said notice. If there are distinct pieces or parcels of property embraced in the proposition, each separate piece of property capable of being disposed of in one parcel without material injury to the remainder, shall be voted on separately. If on canvassing the votes it shall be found that at least two-thirds of all the shares of the capital stock of such corporation have been voted in favor of selling, leasing, mortgaging or otherwise disposing of a given piece or the whole of said mining property, then the chairman and secretary of such meeting shall make a certificate showing the total number of shares of the capital stock of such corporation represented in such meeting and by whom voted; the number of shares voted in favor of the proposition and the number of shares voted against the same. Such certificate shall be signed by the chairman, countersigned by the secretary, and verified by their oaths, taken before some officer qualified to administer oaths. Such verification shall be to the effect that the matters and things therein contained are true, and that the meeting at which such proceedings were had was

called and held in pursuance of law, to the best of their knowledge, information and belief. Such certificate shall be spread at length on the record of stockholders' meetings of such corporation, and a copy thereof under the seal of said corporation, and attested by its president and secretary, and duly acknowledged shall be recorded in the office of the county clerk of every county wherein any of such property is situated.

4407. (§ 1014.) *Corporation dissolved.*—If a sale shall be made as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up as provided for in other cases of the dissolution of corporations.

4408. (§ 1015.) *Consolidation.*—It shall be lawful for two or more corporations formed, or that may hereafter be formed, under the laws of this state, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets, and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation shall take place without the written consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation shall, in any way, relieve such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same shall be given, by advertising for one month in at least one newspaper published in the county where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, shall be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations shall be filed, and a copy thereof shall be filed in the office of the secretary of state; such certificate shall be signed by a majority of each board of directors of the original corporations, and it shall be their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said mining corporations so consolidated to elect a board of directors for the consolidated mining corporation, for the year then next ensuing. The said certificate shall also contain all the requirements prescribed by this code.

4409. *Sale of property. Procedure.*—That the board of directors or trustees of any mining corporation organized under the laws of either the Territory or State of Montana, whether before or after the passage of this Act, and whether the same is

solvent or insolvent, or is a going or prosperous concern or otherwise, shall have power, and upon request of stockholders of the corporation representing at least one-half the amount of the outstanding capital stock, and of record on the books of the company, it shall be their duty to call, by resolution, which resolution shall state whether the whole or only a part of the property of the corporation, and if the latter, shall designate in general terms what part is to be sold, leased, mortgaged, exchanged, or disposed of, for property or for stock of another corporation, domestic or foreign, or otherwise, a meeting of the stockholders of such corporation, appearing as such upon the books of the corporation, for the purpose of considering the question of selling, leasing, mortgaging or exchanging, or disposing of for other property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or for otherwise disposing of the whole or any part of the mining ground, quartz mills, smelters, concentrators, reduction works and other property and assets, of every kind and description, of such mining corporation. Such meeting shall be held at the principal office or place of business of such corporation, and at least thirty days previous notice of the time and place of such meeting shall be given to each person who appears as a stockholder upon the books of the corporation. The secretary of the corporation shall make out and deposit in the United States Post Office, postage paid, a notice of such meeting, directed to each stockholder of record of the corporation by his name and to his place of residence appearing on said records, and shall make and file his affidavit of such deposit. Such notice shall be considered as given upon the deposit of the same in the Post Office, as above required, and shall state the time and place of meeting, and that it is to consider and decide upon the question of disposing of, selling, leasing, mortgaging, exchanging for property or for the whole or any part of the capital stock of any other corporation, or otherwise disposing of the whole or any part of the property of said corporation, as the case may be. If such meeting is called for the purpose of selling, leasing, mortgaging, exchanging, or otherwise disposing of the whole of the property of the corporation, the notice shall so state, but if it is for the purpose of selling, leasing, mortgaging, exchanging, or otherwise disposing of only a part of the property of the corporation, the notice shall so state and describe generally what part it is. A similar notice shall also be published, at least once a week for at least four successive weeks preceding the day of the stockholders' meeting, in some newspaper of general circulation published at or near the office or principal place of business of such corporation, or if there be no newspaper published in said place, then the nearest place thereto where a

newspaper is published, and said publication shall be proved by affidavit of the publisher or clerk of such newspaper, filed with the secretary of such corporation. Upon the day appointed for said meeting, if stockholders representing at least two-thirds of the whole number of shares of the capital stock of the corporation then outstanding and of record on the books of the company, appear in person or by agents or proxies filed with the secretary, the stockholders shall organize by electing one of their number chairman and some suitable person secretary. Thereupon, any proposition for the sale or lease, or mortgage, or exchange, or disposition for other property, or for the whole or part of the capital stock of any other corporation, whether domestic or foreign, or to otherwise dispose of the whole or any part of the mining ground, quartz mills, smelters, concentrators, reduction works, or other property or assets of the corporation, of every kind or description, may be considered and acted upon by said meeting, and if stockholders representing at least two-thirds of the whole number of shares of the capital stock of said corporation then outstanding, and of record on the books of the company, appearing at said meeting in person or by agents or proxies as above provided, vote in favor of any such proposition, whether proposed by the directors or trustees or not, as the stockholders may see fit, which proposition shall be in the form of a resolution specifying the particulars thereof and entered on the minutes of said stockholders' meeting, the said proposition or resolution shall be taken and adopted as the act of the corporation and shall be carried out as such and shall be approved and adopted by the board of directors or trustees. The secretary of such meeting shall enter upon the minutes of said stockholders' meeting the number of shares voted for or against the proposition or resolution, and by whom voted, and stockholders voting against said proposition or resolution shall be taken as dissenting therefrom. Upon the adoption of any proposition or resolution such as above referred to, by the stockholders' meeting, the secretary of the meeting shall make out a true and complete copy of the minutes of the stockholders' meeting, which shall be signed by the chairman of such meeting and attested by said secretary and verified by them and acknowledged as required in the case of the conveyance of real estate, and shall file the same for record in the office of the county clerk and recorder of the county wherein the principal office or place of business of such corporation is situated, and also in the offices of the county clerks and recorders of any other counties wherein any of the real property included in the proposition or resolution adopted by said stockholders' meeting is situated, and said record shall impart notice and have the same effect as other instruments required by law to

be recorded, and such copies so filed and recorded, or the record thereof, or the certified copy of such record, shall be prima facie evidence of the matters and facts therein stated, and thereupon, and upon the adoption and approval by the board of directors or trustees of the corporation of such proposition or resolution, the corporation and its officers shall have full power and authority to do all acts and to execute all conveyances or other instruments in writing which are necessary or proper to carry out the said proposition or resolution, and the sale, lease, mortgage, exchange, or other disposition, or conveyance of the whole or any part of the property of said corporation authorized by said proposition or resolution, shall thereupon take effect and have the same force as if all the stockholders of the corporation had consented thereto. *Provided*, That nothing contained in this Act shall be deemed to limit or restrict the powers of the board of directors or trustees of mining corporations, or of corporations other than mining, in relation to the disposition of property or the conduct of business; and *Provided, Further*, that this Act shall not be so construed as to effect any cases now pending in the Courts of this State or of the United States [Act of February 28th, 1899, § 1.] (6th Sess. 113-116.)

MacGinniss v. B. & M. Co., 29 Mont. 461; 75 Pac. 98. It is not against the public policy of this state to permit mining corporations to hold and vote stock

in other mining corporations.

Allen v. Ajax M. Co., 30 Mont. 501; 77 Pac. 49. This section is constitutional.

4410. *Dissolution upon sale.*—If a disposition shall be made by sale, exchange or otherwise as above provided of the whole of the property of such corporation, the corporation shall thereby be dissolved, and its affairs shall be wound up, as provided for in other cases of the dissolution of corporations. [Act of February 28th, 1899, § 2.] (6th Sess. 116.)

4411. *Rights of dissenting stockholders. Appraisement.*—Any stockholder who shall not, at said stockholders' meeting, have voted for or authorized the proposition or resolution for the disposition of property which may have been adopted at such stockholders' meeting, may, within twenty days after the date of said stockholders' meeting, give written notice to the said corporation that he does not assent thereto, and also a like notice to the grantee or vendee, or any agent or representative of such grantee or vendee, provided that such grantee or vendee, or agent or representative of such grantee or vendee be within the state, and demands payment of the value of his stock, and within ten days after service of said notices he must, or the said corporation, or its grantee, or vendee, may, make application in the district court of the county where the principal place of business of the corporation is situated to have the value of his stock fixed and appraised, of which application at least ten days previous notice must be given by the person so applying to the other parties. The

notices hereinbefore provided for may be served in the manner provided by law for the services of summons in cases in the district court. Upon said application, the said district court shall appoint three competent and disinterested persons as appraisers, and designate the time and place of their first meeting to appraise the value of the stock of such dissenting stockholders, and give them such directions as the said court may think proper. The court may fill any vacancies in the board of appraisers, occurring by refusal or neglect to serve, or otherwise. Said appraisers shall meet at the time and place designated by the court, and they or any two of them shall take an oath to honestly and faithfully discharge their duties, and shall hear and take evidence in relation to the value of the stock of such dissenting stockholder at the time of his dissent and find the value thereof, and return and file their report and appraisal with the clerk of said court. The charges and expenses of such appraisal shall be paid by the corporation or its grantee or vendee. [*Act of February 28th, 1899, § 3.*] (*6th Sess. 116.*)

4412. *Appeal from appraisal.*—Either party to the appraisal and award of such appraisers may, within thirty days from the filing of the same and service of notice thereof, appeal from such award to the district court of the county in which the same is made and filed, and thereupon the value of such stock shall be reassessed by a jury in the same manner as appeals are taken and trial had on appeals from the assessment of commissioners in condemnation proceedings provided by law. When such appraisal or award shall become final, the court shall enter judgment in favor of such dissenting stockholder and against the corporation and its grantee or vendee for the amount of said award, with expenses and cost of proceedings, and execution may be issued on said judgment as in other cases. The judgment may also provide for the sale of the property affected by the lien hereinafter provided for. The claim of such dissenting stockholder for compensation and costs, as aforesaid, and the appraisal and award and judgment thereon shall be and remain a lien upon all the real property of the corporation so conveyed or disposed of in pursuance of the stockholders' resolution, and shall be prior and superior to the rights of the grantee or vendee to all of such property; but the claims of all dissenting stockholders for compensation and their several appraisements, awards and judgments, shall be equal liens upon said property, without precedence or priority between themselves. When the amount of such appraisal and costs shall have been paid to or collected by such dissenting stockholder or deposited with the clerk of the said court for him, he shall cease to have any interest in said stock or in the corporate property of such cor-

poration which may have been sold or disposed of in pursuance of the resolution of the stockholders meeting as herein provided, and the stock of such dissenting stockholder shall thereupon become the property of the party satisfying the said judgment or appraisal unless otherwise provided for by contract between such corporation and its grantee. [*Act of February 28th, 1899, § 4.*] (6th Sess. 117.)

TITLE XI.

FOREIGN CORPORATIONS.

- Section 4413. Foreign corporations must file copy of charter and statement.*
- “ 4414. *Consent of agent.*
- “ 4415. *Contracts void if made before compliance with act.*
- “ 4416. *Annual statement.*
- “ 4417. *Penalty.*
- “ 4418. *Penalty for acting as agent.*
- “ 4419. *Corporations engaged in business at time of passage of act.*
- “ 4420. *Foreign corporations may exercise power of eminent domain.*

4413. *Foreign corporations must file copy of charter and statement.*—All foreign corporations or joint stock companies, except foreign insurance companies and corporations otherwise provided for, organized under the laws of any State, or of the United States, or of any foreign government, shall, before doing business within this State, file in the office of the Secretary of State, and in the office of the County Clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporations, and also a statement, verified by oath of the President and Secretary of such corporation, and attested by a majority of its Board of Directors showing:

1. The name of such corporation and the location of its principal office or place of business without this State; and the location of the place of business or principal office within this State.
2. The amount of capital stock.
3. The amount of its capital stock actually paid in, in money.
4. The amount of its capital stock paid in, in any other way, and in what.
5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof.
6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time, and in the same office, a certificate, under the seal of the corporation, and the signature of its President, Vice-President, or other acting head, and its Secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this State, upon all causes of action arising against it in this State, and that service of process may be made upon some person, a citizen of this State, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.

7. In case of alteration or amendment of the charter or articles of incorporation of any foreign corporation doing business in this State, or of increasing its capital stock, or of continuing its corporate existence, it must within thirty days after the same is adopted by the corporation file a duly authenticated copy of such amendment or alteration or certificate of increase of capital stock, or of continuance of corporate existence in the office of the Secretary of State and in the office of the County Clerk of the County where it intends to carry on business; and whenever any such corporation increases its capital stock or continues its corporate existence, it shall pay to the Secretary of State at the time of filing in his office the duly authenticated copy of the certificate thereof, the same fee that is required by law from domestic corporations for filing certificates of increase of capital stock or certificates of corporate existence. Any such corporation failing, neglecting or refusing to file such duly authenticated copies of all alterations, or amendments, of its charter or articles of incorporation, and of all certificates of increase of capital stock or continuance of corporate existence, shall forfeit its right to do business in this State and shall be subject to all the penalties, liabilities and restrictions imposed by law upon foreign corporations for doing business in this State without filing duly authenticated copies of their charters, or articles of incorporation, in the manner required by law; *provided, however*, that any foreign corporation now doing business in this State and which has altered or amended its charter or articles of incorporation or increased its capital stock, or continued its corporate existence since first filing a duly authenticated copy of its charter or articles of incorporation with the Secretary of State, and which has not already filed a duly authenticated copy of such alterations, amendments, or certificates of increase or continuance, must within ninety days from and after the passage and approval of this Act comply herewith. [Act approved March 9, 1907.] (10th Sess. Chap. 181.)

State v. Rotwitt, 17 Mont. 41; 41 Pac. 1004.

State v. Rotwitt, 18 Mont. 87; 44 Pac. 409.

Mutual I. Co. v. Winne, 20 Mont. 20; 49 Pac. 446.

Zion M. Co. v. Mayo, 22 Mont. 101; 55 Pac. 915. In an action by a foreign corporation to enforce a domestic contract, the plaintiff corporation is not required to plead in its complaint compliance with the statutes entitling it to do business within the state.

American Co. v. O'Rourke, 23 Mont. 531; 59 Pac. 910. The question in an action on a domestic contract of the noncompliance of a foreign corporation with the statutes entitling it to do business within the state can only be raised by answer.

State v. Mayor, 30 Mont. 342; 76 Pac. 759.

State v. Aetna Co., 34 Mont. 381; 87 Pac. 268.

Helena P. Co. v. Spratt, 35 Mont. 131; 88 Pac. 773.

4414. *Consent of agent.*—The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of a consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it. [*Act approved March 9th, 1901, § 2.*] (7th Sess. 151.)

4415. *Contracts void if made before compliance with act.*—If any foreign corporation shall attempt or commence to do business in this state without having first filed said statement, certificate and consent, required by this Act, no contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statement, certificate or consent, shall be enforceable by the corporation until the foregoing provisions have been complied with. [*Act approved March 9th, 1901, § 3.*] (7th Sess. 151.)

4416. *Annual statement.*—Every corporation shall annually, and within two months from the first day of April of each year, make a report, which shall be in the same form, and contain the same information as required in the statement mentioned in Section 4413 (1) of this Act, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of state. [*Act approved March 9th, 1901, § 4.*] (7th Sess. 151.)

4417. *Penalty.*—Every foreign corporation doing business in this state contrary to the provisions of this Act is guilty of a misdemeanor. [*Act approved March 9th, 1901, § 5.*] (7th Sess. 151.)

4418. *Penalty for acting as agent.*—Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor. [*Act approved March 9th, 1901, § 6.*] (7th Sess. 151.)

4419. *Corporations engaged in business at time of passage of act.*—Any foreign corporation or joint stock company now en-

gaged in carrying on business in Montana, which has heretofore filed a copy of its charter or articles of incorporation, a statement, certificate designating an agent upon whom service of summons and other process may be made, and the consent of such agent in compliance with the provisions of Title XI, Part IV, Division I of the Civil Code of Montana shall not be required to comply with the provision of §§ 4413 (1) and 4414 (2) of this Act *provided*, that if the agent designated and appointed by such corporation or joint stock company does not now reside in this State, or has resigned, or his appointment has been revoked, or if he shall hereafter reside out of the State, or resign, or his appointment be revoked, such corporation or joint stock company shall be required to designate another agent and file such designation and the consent of such agent in accordance with the provisions of this act. [*Act approved March 9th, 1901, § 8.*] (7th Sess. 152.)

4420. *Foreign corporations may exercise power of eminent domain.*—Any corporation, organized under the laws of any state of the United States, or the laws of the United States, and authorized to engage in business in this state, and engaged in business in this state, may acquire real property as provided in the Code of Civil Procedure, Title VII, Part III, to the same extent, for the same purposes, and in the same manner, as corporations organized under the laws of this state. [*Act approved February 20, 1907.*] (10th Sess. Chap. 23.)

DIVISION SECOND.

- PART I. PROPERTY IN GENERAL.
- II. REAL OR IMMOVABLE PROPERTY.
 - III. PERSONAL OR MOVABLE PROPERTY.
 - IV. ACQUISITION OF PROPERTY.

PART I.

PROPERTY IN GENERAL.

- TITLE I. NATURE OF PROPERTY.
- II. OWNERSHIP.
 - III. GENERAL DEFINITIONS.

TITLE I.

NATURE OF PROPERTY.

- Section 4421. Property, what.*
- “ 4422. *In what property may consist.*
 - “ 4423. *Wild animals.*
 - “ 4424. *Real and personal.*

Section 4425. *Real property.*

“ 4426. *Land.*

“ 4427. *Fixtures.*

“ 4428. *Fixtures attached to mines.*

“ 4429. *Appurtenances.*

“ 4430. *Personal property.*

4421. (§ 1070.) *Property, what.*—The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

Terrace Co. v. San Antonio Co., 1 C. App. 513; 82 Pac. 562.

4422. (§ 1071.) *In what property may consist.*—There may be ownership of all inanimate things which are capable of appropriation or of mutual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author; the good will of a business; trade marks and signs, and of rights created or granted by statute.

Terrace Co. v. San Antonio Co., 1. C. App. 513; 82 Pac. 562.

4423. (§ 1072.) *Wild animals.*—Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken or held in the possession, or disabled and immediately pursued.

Ex parte Kennke, 136 Cal. 531; 69 Pac. 261.

4424. (§ 1073.) *Real and personal.*—Property is either:

1. Real or immovable; or,
2. Personal or movable.

4425. (§ 1074.) *Real property.*—Real or immovable property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

Peterson v. Gibbs, 147 Cal. 7; 81 Pac. 121.

4426. (§ 1075.) *Land.*—Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

Mount Carmel Co. v. Webster, 140 Cal. 187; 73 Pac. 826.

4427. (§ 1076.) *Fixtures.*—A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs, or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as, by means of cement, plaster, nails, bolts, or screws.

M. M. Co. v. O'Donnell, 24 Mont. 71; 60 Pac. 596. A cover for a stovepipe flue, opening into the chimney from the interior of a building, and removable when such flue was to be used, was not material entering into the construction

of a building, nor a fixture, and such building was not subject to a lien therefor.

Mount Carmel Co. v. Webster, 140 Cal. 187; 73 Pac. 826.

4428. (§ 1077.) *Fixtures attached to mines.*—Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

Hamilton v. Delhi Co., 118 Cal. 153; 50 Pac. 378.

4429. (§ 1078.) *Appurtenances.*—A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water course, or of a passage for light, air, or heat from or across the land of another.

Smith v. Denniff, 23 Mont. 68; 57 Pac. 558.

Smith v. Denniff, 24 Mont. 23; 60 Pac. 399. A water course across the land of another is an easement, and an appurtenance to land is an easement. One having a possessory right in land, who ap-

propriates water from the public domain for use on such land, cannot be deprived of his title to such water right by a party who wishes to make it appurtenant to land which he owns.

Visalia Bank v. Smith, 146 Cal. 400; 81 Pac. 542.

4430. (§ 1079.) *Personal property.*—Every kind of property that is not real is personal.

Terrace Co. v. San Antonio Co., 1 C. App. 513; 82 Pac. 562.

TITLE II.

OWNERSHIP.

CHAPTER I. OWNERS.

II. MODIFICATIONS OF OWNERSHIP.

III. RIGHT OF OWNERS.

IV. TERMINATION OF OWNERSHIP.

CHAPTER I.

OWNERS.

Section 4431. *Owner.*

“ 4432. *Property of the state.*

4431. (§ 1090.) *Owner.*—All property has an owner, whether that owner is the state, and the property public; or the owner an individual, and the property private. The state may also hold property as a private proprietor.

4432. (§ 1091.) *Property of the state.*—The state is the owner of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated or granted to the state, and all property of which there is no other owner.

State v. Court. 148 Cal. 56; 82 Pac. 673.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

- ARTICLE I. INTERESTS IN PROPERTY.
 II. CONDITIONS OF OWNERSHIP.
 III. RESTRAINTS UPON ALIENATION.
 IV. ACCUMULATIONS.

ARTICLE I.

INTERESTS IN PROPERTY.

- Section 4433. *Ownership, absolute or qualified.*
 " 4434. *When absolute.*
 " 4435. *When qualified.*
 " 4436. *Several ownership, what.*
 " 4437. *Ownership of several persons.*
 " 4438. *Joint interest, what.*
 " 4439. *Partnership interest, what.*
 " 4440. *Interest in common, what.*
 " 4441. *What interests are in common.*
 " 4442. *Interests as to time.*
 " 4443. *Present interest, what.*
 " 4444. *Future interest, what.*
 " 4445. *Perpetual interest, what.*
 " 4446. *Limited interest, what.*
 " 4447. *Kinds of future interests.*
 " 4448. *Vested interests.*
 " 4449. *Contingent interests.*
 " 4450. *Two or more future interests.*
 " 4451. *Certain future interests not to be void.*
 " 4452. *Posthumous children.*
 " 4453. *Qualities of expectant estates.*
 " 4454. *Same.*
 " 4455. *Interests in real property.*
 " 4456. *Same.*
 " 4457. *What future interests are recognized.*

4433. (§ 1100.) *Ownership, absolute or qualified.*—The ownership of property is either:

1. Absolute; or,
2. Qualified.

Higgins v. San Diego, 131 Cal. 307; 63 Pac. 470.

4434. (§ 1101.) *When absolute.*—The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

Rodgers v. Bachman, 109 Cal. 555; 42 Pac. 448.

4435. (§ 1102.) *When qualified.*—The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited.
3. When the use is restricted.

4436. (§ 1103.) *Several ownership, what.*—The ownership of property by a single person is designated as a sole or several ownership.

4437. (§ 1104.) *Ownership of several persons.*—The ownership of property by several persons is either:

1. Of joint interests.
2. Of partnership interests.
3. Of interests in common.

4438. (§ 1105.) *Joint interest, what.*—A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

Estate of Hittell, 141 Cal. 435; 75 Pac. 53.

4439. (§ 1106.) *Partnership interest, what.*—A partnership interest is one owned by several persons in partnership, for partnership purposes.

4440. (§ 1107.) *Interest in common, what.*—An interest in common is one owned by several persons, not in joint ownership or partnership.

Estate of Hittell, 141 Cal. 435; 75 Pac. 53.

4441. (§ 1108.) *What interests are in common.*—Every interest created in favor of several persons in their own right, including husband and wife, is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in § 4438 (1105).

Estate of Hittell, 141 Cal. 435; 75 Pac. 53.

4442. (§ 1109.) *Interests as to time.*—In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

4443. (§ 1110.) *Present interest, what.*—A present interest entitles the owner to the immediate possession of the property.

4444. (§ 1111.) *Future interest, what.*—A future interest entitles the owner to the possession of the property only at a future period.

Goldtree v. Thompson, 79 Cal. 622; 22 Pac. 50.

4445. (§ 1112.) *Perpetual interest, what.*—A perpetual interest has a duration equal to that of the property.

4446. (§ 1113.) *Limited interest, what.*—A limited interest has a duration of less than that of the property.

4447. (§ 1114.) *Kinds of future interests.*—A future interest is either:

1. Vested; or,
2. Contingent.

4448. (§ 1115.) *Vested interests.*—A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the intermediate or precedent interest.

Estate of Sanford, 136 Cal. 106; 68 Pac. 494.

4449. (§ 1116.) *Contingent interests.*—A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Jewell v. Pierce, 120 Cal. 84; 52 Pac. 132.

4450. (§ 1117.) *Two or more future interests.*—Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

4451. (§ 1118.) *Certain future interests not to be void.*—A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

4452. (§ 1119.) *Posthumous children.*—When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

4453. (§ 1120.) *Qualities of expectant estates.*—Future interests pass by succession, will, and transfer, in the same manner as present interests.

Dunn v. Schell, 122 Cal. 627; 55 Pac. 595.

4454. (§ 1121.) *Same.*—A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

Supreme Council v. Gehrenbeck, 124 Cal. 44; 56 Pac. 640.

4455. (§ 1122.) *Interests in real property.*—In respect to real or immovable property, the interests mentioned in this chapter are denominated estates and are specially named and classified in part II., of this division.

4456. (§ 1123.) *Same.*—The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided.

4457. (§ 1124.) *What future interests are recognized.*—No future interest in property is recognized by the law, except such as is defined in this division of the code.

ARTICLE II.

CONDITIONS OF OWNERSHIP.

Section 4458. Fixing the time of enjoyment.

“ 4459. *Conditions.*

“ 4460. *Certain conditions precedent void.*

“ 4461. *Conditions restraining marriage void.*

“ 4462. *Conditions restraining alienation void.*

4458. (§ 1140.) *Fixing the time of enjoyment.*—The time when the enjoyment of property is to begin or end may be determined by computation, to be made to depend on event. In the latter case, the enjoyment is said to be upon condition.

4459. (§ 1141.) *Conditions.*—Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

4460. (§ 1142.) *Certain conditions precedent void.*—If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

4461. (§ 1143.) *Conditions restraining marriage void.*—Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not effect limitations where intent was not to forbid marriage, but only to give the use until marriage.

Estate of Alexander, 149 Cal. 151; 85 Pac. 308.

4462. (§ 1144.) *Conditions restraining alienation void.*—Conditions restraining alienation, when repugnant to the interest created, are void.

Estate of Campbell, 149 Cal. 717; 87 Pac. 573.

ARTICLE III.

RESTRAINTS UPON ALIENATION.

Section 4463. How long it may be suspended.

“ 4464. *Future interests void, which suspend power of alienation.*

“ 4465. *Leases of agricultural lands, for over ten years, void.*

“ 4466. *Leases of city lots, for over twenty-five years, void.*

4463. (§ 1150.) *How long it may be suspended.*—The absolute power of alienation cannot be suspended, by any limitation or condition whatever, for a longer period than during the con-

tinuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in § 4492 (1221).

Estate of Lux, 149 Cal. 204; 85 Pac. 147.

4464. (§ 1151.) *Future interests void, which suspend power of alienation.*—Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended, when there are no persons in being by whom an absolute interest in possession can be conveyed.

Blakeman v. Miller, 136 Cal. 141; 68 Pac. 587.

4465. (§ 1152.) *Leases of agricultural lands, for over ten year, void.*—No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid.

Mann v. Mann, 141 Cal. 330; 74 Pac. 995.

4466. (§ 1153.) *Leases of city lots, for over twenty-five years, void.*—No lease or grant of any town or city lot, for a longer period than twenty-five years, in which shall be reserved any rent or service of any kind, shall be valid.

Harter v. San Jose, 141 Cal. 667; 75 Pac. 344.

ARTICLE IV.

ACCUMULATIONS.

Section 4467. *Dispositions of income.*

“ 4468. *Accumulations, when void.*

“ 4469. *Accumulation of income.*

“ 4470. *Other directions when void in part.*

“ 4471. *Application of income, to support, etc., of minor.*

4467. (§ 1160.) *Dispositions of income.*—Dispositions of the income of the property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

Goldtree v. Thompson, 79 Cal. 623; 22 Pac. 50.

4468. (§ 1161.) *Accumulations, when void.*—All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

Estate of Pforr, 144 Cal. 127; 77 Pac. 825.

4469. (§ 1162.) *Accumulation of income.*—An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests and during the minority of the beneficiaries, and terminate at the expiration of such minority.

Goldtree v. Thompson, 79 Cal. 623; 22 Pac. 50.

4470. (§ 1163.) *Other directions when void in part.*—If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

4471. (§ 1164.) *Application of income, to support, etc., of minors.*—When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CHAPTER III.

RIGHT OF OWNERS.

Section 4472. *Increase of property.*

“ 4473. *In certain cases who entitled to income of property.*

4472. (§ 1170.) *Income of property.*—The owner of a thing also owns all its products and accessions.

Frank v. Symons, 35 Mont. 62; 88 Pac. 561.

4473. (§ 1171.) *In certain cases who entitled to income of property.*—When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the person presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

Section 4474. *Future interests, when defeated.*

“ 4475. *Same.*

“ 4476. *Future interests when not defeated.*

“ 4477. *Same.*

4474. (§ 1180.) *Future interests, when defeated.*—A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

4475. (§ 1181.) *Same.*—A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is the future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

4476. (§ 1182.) *Future interests when not defeated.*—No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by destruction of such precedent interest, by forfeiture, surrender, merger, or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof

Pryor v. Winter, 147 Cal. 559; 82 Pac. 202.

4477. (§ 1183.) *Same.*—No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner, and to the same extent, as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITIONS.

Section 4478. Income, what.

“ 4479. *Time of creation, what.*

4478. (§ 1190.) *Income, what.*—The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends, upon stock, and other produce of personal property.

4479. (§ 1191.) *Time of creation, what.*—The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition or interest, within the meaning of this part of the code.

Estate of Steele, 124 Cal. 537; 57 Pac. 564.

PART II.

REAL OR IMMOVABLE PROPERTY.

- TITLE I. GENERAL PROVISIONS.
 II. ESTATES IN REAL PROPERTY.
 III. RIGHTS AND OBLIGATIONS.
 IV. USES AND TRUSTS.
 V. POWERS.

TITLE I.

GENERAL PROVISIONS.

4480. (§ 1200.) *Real property, how governed.*—Real property within this state is governed by the law of this state, except where the title is in the United States.

TITLE II.

ESTATES IN REAL PROPERTY.

- CHAPTER I. ESTATES IN GENERAL.
 II. TERMINATION OF ESTATES.
 III. SERVITUDES.

CHAPTER I.

ESTATES IN GENERAL.

- Section 4481. *Enumeration of estates.*
 “ 4482. *What estate a fee simple.*
 “ 4483. *Conditional fees and estates tail abolished.*
 “ 4484. *Certain remainders valid.*
 “ 4485. *Freeholds, chattels real, chattel interests.*
 “ 4486. *Estates for life of a third person, when a freehold, etc.*
 “ 4487. *Future estates, what.*
 “ 4488. *Reversions.*
 “ 4489. *Remainders.*
 “ 4490. *Limitations of chattels real.*
 “ 4491. *Suspension by trust.*
 “ 4492. *Contingent remainder in fee.*
 “ 4493. *Remainders, future and contingent estates, how created.*
 “ 4494. *Limitation of successive estates for life.*
 “ 4495. *Remainder upon estates for life of third person.*
 “ 4496. *Contingent remainder on a term of years.*
 “ 4497. *Remainder of estates for life.*

Section 4498. Remainder upon a contingency.

“ 4499. *Heirs of a tenant for life, when to take as purchasers.*

“ 4500. *Construction of certain remainders.*

“ 4501. *Effect of power of appointment.*

4481. (§ 1210.) *Enumeration of estates.*—Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance or perpetual estates.
2. Estates for life.
3. Estates for years; or,
4. Estates at will.

Summerville v. Stockton Co., 142 Cal. 538; 76 Pac. 243.

4482. (§ 1211.) *What estate a fee simple.*—Every estate of inheritance is a fee, and such estate, when not defeasable or conditional, is a fee simple, or an absolute fee.

4483. (§ 1212.) *Conditional fees and estates tail abolished.*—Estates tail are abolished, and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

Barnett v. Barnett, 104 Cal. 302; 37 Pac. 1049.

4484. (§ 1213.) *Certain remainders valid.*—Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession on the death of the first taker, without issue living at the time of his death.

4485. (§ 1214.) *Freeholds, chattels real, chattel interests.*—Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

Summerville v. Stockton Co., 142 Cal. 538; 76 Pac. 243.

4486. (§ 1215.) *Estates for life of a third person, when a freehold, etc.*—An estate, during the life of a third person, whether limited to heirs or otherwise, is a freehold.

4487. (§ 1216.) *Future estates, what.*—A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time or otherwise, of a precedent estate created at the same time.

Wilhoit v. Salmon, 146 Cal. 447; 80 Pac. 705.

4488. (§ 1217.) *Reversions.*—A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

Estate of Bennett, 134 Cal. 322; 66 Pac. 370.

4489. (§ 1218.) *Remainders*.—When a future estate, other than reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

4490. (§ 1219.) *Limitations of chattels real*.—The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

4491. (§ 1220.) *Suspension by trust*.—The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation, within the meaning of § 4463 (1150).

Estate of Steele, 124 Cal. 537; 57 Pac. 564.

4492. (§ 1221.) *Contingent remainder in fee*.—A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the person to whom the first remainder is limited, die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain majority.

Estate of Willey, 128 Cal. 9; 60 Pac. 471.

4493. (§ 1222.) *Remainders, future and contingent estates, how created*.—Subject to the rules of this title, and of part I. of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency, which, if it should occur, must happen within the period prescribed in this title

Blakeman v. Miller, 136 Cal. 141; 68 Pac. 587.

4494. (§ 1223.) *Limitation of successive estates for life*.—Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created

4495. (§ 1224.) *Remainder upon estates for life of third person*.—No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term of years, unless it is for the whole residue of such term.

4496. (§ 1225.) *Contingent remainder on a term of years*.—A contingent remainder cannot be created on a term of years,

unless the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

Blakeman v. Miller, 136 Cal. 141; 68 Pac. 587.

4497. (§ 1226.) *Remainder of estates for life.*—No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

4498. (§ 1227.) *Remainder upon a contingency.*—A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent; and every such remainder is to be deemed a conditional limitation.

Jewell v. Pierce, 120 Cal. 84; 52 Pac. 132.

4499. (§ 1228.) *Heirs of a tenant for life, when to take as purchasers.*—When a remainder is limited to the heir or heirs of the body of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life

Barnett v. Barnett, 104 Cal. 299; 37 Pac. 1049.

4500. (§ 1229.) *Construction of certain remainders.*—When a remainder of an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration by lapse of time, of such term of years.

4501. (§ 1230.) *Effect of power of appointment.*—A general or special power of appointment does not prevent the vesting of a future estate limited to take effect in case such power is not executed.

Estate of Dunphy, 147 Cal. 102; 81 Pac. 315.

CHAPTER II.

TERMINATION OF ESTATES.

Section 4502. *Tenancy at will may be terminated by notice.*

“ 4503. *Effect of notice.*

“ 4504. *Re-entry, when and how to be made.*

“ 4505. *Summary proceedings in certain cases, how provided for.*

“ 4506. *Notice not necessary before actions.*

4502. (§ 1240.) *Tenancy at will may be terminated by notice.*—A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice in writing to the tenant, in the manner prescribed by the code of civil procedure, to remove from the premises within a period of not less than one month, to be specified in the notice.

McCarthy v. Brown, 113 Cal. 19; 45 Pac. 14.

4503. (§ 1241.) *Effect of notice.*—After such notice has been served and the period specified by such notice has expired, but not before, the landlord may re-enter, or proceed according to law to recover possession.

Kaiser v. Dalto, 140 Cal. 167; 73 Pac. 828.

4504. (§ 1242.) *Re-entry, when and how to be made.*—Whenever the right of re-entry is given to the grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days' notice, as provided in the Code of Civil Procedure.

Earl Co. v. Fava, 138 Cal. 79; 70 Pac. 1073.

4505. (§ 1243.) *Summary proceedings in certain cases, how provided for.*—Summary proceedings for obtaining possession of real property forcibly entered, or forcibly and unlawfully detained, are provided for in the Code of Civil Procedure.

4506. (§ 1244.) *Notice not necessary before action.*—An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time, in the district court, after the right to re-enter has accrued, without the notice prescribed in § 4504 (1242).

CHAPTER III.

SERVITUDES.

Section 4507. *Servitudes attached to land.*

“ 4508. *Servitudes not attached to land.*

“ 4509. *Designation of estates.*

“ 4510. *By whom grantable.*

“ 4511. *By whom held.*

“ 4512. *Extent of servitudes.*

“ 4513. *Apportioning easements.*

“ 4514. *Rights of owner of future estate.*

“ 4515. *Actions by owner and occupant of dominant tenement.*

“ 4516. *Actions by owner of servient tenement.*

“ 4517. *How extinguished.*

4507. (§ 1250.) *Servitudes attached to land.*—The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals, and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.

8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land.

9. The right of receiving water from or discharging the same upon land.

10. The right of flooding land.

11. The right of having water flow without diminution or disturbance of any kind.

12. The right of using a wall as a party wall.

13. The right of receiving more than natural support from adjacent land or things affixed thereto.

14. The right of having the whole of a division fence maintained by coterminous owner.

15. The right of having public conveyances stopped, or of stopping the same on land.

16. The right of a seat in church.

17. The right of burial.

Smith v. Denniff, 24 Mont. 24; 60 Pac. 399. Stockton Co. v. San Joaquin Co., 148 Cal. 32; 83 Pac. 54.

4508. (§ 1251.) *Servitudes not attached to land.*—The following land burdens, or servitudes upon land, may be granted and held, though not attached to land:

1. The right of pasture, and of fishing and taking game.

2. The right of a seat in church.

3. The right of burial.

4. The right of taking rents and tolls.

5. The right of way.

6. The right of taking water, wood, minerals, or other things

Smith v. Denniff, 24 Mont. 24; 60 Pac. 399. Stockton Co. v. San Joaquin Co., 148 Cal. 32; 83 Pac. 54.

4509. (§ 1252.) *Designation of estates.*—The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is held is called the servient tenement.

4510. (§ 1253.) *By whom grantable.*—A servitude can be created only by one who has a vested estate in the servient tenement.

4511. (§ 1254.) *By whom held.*—A servitude thereon cannot be held by the owner of the servient tenement.

Smith v. Denniff, 24 Mont. 25; 60 Pac. 399. Dixon v. Schermeier, 110 Cal. 585; 42 Pac. 1091.

4512. (§ 1255.) *Extent of servitudes.*—The extent of a servitude is determined by the terms of the grant, or of the nature of the enjoyment by which it was acquired.

Winslow v. Vallejo, 148 Cal. 725; 84 Pac. 191.

4513. (§ 1256.) *Apportioning easements.*—In case of partition of the dominant tenement, the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

4514. (§ 1257.) *Rights of owner of future estate.*—The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

4515. (§ 1258.) *Actions by owner and occupant of dominant tenement.*—The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

Los Robles Co. v. Stoneman, 146 Cal. 211; 79 Pac. 880.

4516. (§ 1259.) *Actions by owner of servient tenement.*—The owner in fee of a servient tenement may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

4517. (§ 1260.) *How extinguished.*—A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person.

2. By the destruction of the servient tenement.

3. By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

Smith v. Denniff, 24 Mont. 25; 60

Smith v. Hawkins, 110 Cal. 126; 42 Pac. 453.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I. RIGHTS OF OWNERS.

II. OBLIGATIONS OF OWNERS.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I. INCIDENTS OF OWNERSHIP.

II. BOUNDARIES.

ARTICLE I.

INCIDENTS OF OWNERSHIP.

Section 4518. *Rights of tenant for life.*

" 4519. *Rights of tenant for years, etc.*

" 4520. *Same.*

" 4521. *Rights of grantees of rents and reversion.*

" 4522. *Liability of assignee of lessee.*

Section 4523. *Rights of lessees and their assigns, etc.*

“ 4524. *Remedy on lease for life.*

“ 4525. *Rent dependent on life.*

“ 4526. *Remedy of reversions, etc.*

“ 4527. *Terms of lease may be changed by notice.*

4518. (§ 1270.) *Rights of tenant for life.*—The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

4519. (§ 1271.) *Rights of tenant for years, etc.*—A tenant for years or at will unless he is a wrong-doer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and a tenant at will or for an indefinite term, may cultivate and harvest the crops growing at the end of his tenancy.

4520. (§ 1272.) *Same.*—A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

4521. (§ 1273.) *Rights of grantees of rents and reversion.*—A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or of any waste or cause of forfeiture, as his grantor or devisor might have had.

Estate of O'Connor, 2 C. App. 475; 84 Pac. 317.

4522. (§ 1274.) *Liability of assignee of lessee.*—Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession he has against the assigns of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises.

4523. (§ 1275.) *Rights of lessees and their assignees, etc.*—Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises.

4524. (§ 1276.) *Remedy on leases for life.*—Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

4525. (§ 1277.) *Rent dependent on life.*—Rent dependent on the life of a person may be recovered after as well as before his death.

4526. (§ 1278.) *Remedy of reversioners, etc.*—A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an intervening estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

4527. (§ 1279.) *Terms of lease may be changed by notice.*—In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice; if the tenant shall continue to hold the premises after the expiration of the month.

Macdonough v. Starbird, 105 Cal. 19; 38 Pac. 510.

ARTICLE II.

BOUNDARIES.

Section 4528. *Rights of owner.*

“ 4529. *Boundaries by water.*

“ 4530. *Boundaries by ways.*

“ 4531. *Lateral and subjacent support.*

“ 4532. *Trees whose trunks are wholly on land of one.*

“ 4533. *Line trees.*

4528. (§ 1290.) *Rights of owner.*—The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.

4529. (§ 1291.) *Boundaries by water.*—Except where the grant under which the land is held indicates a different intent, the owner of the land when it borders upon a navigable lake or stream takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream.

Gibson v. Kelly, 15 Mont. 422; 39 Pac. 517. The boundary of land on a non-tidal navigable river, when another intent is not expressed, extends to the ordinary low-water mark, and ejectment will lie at the suit of a riparian owner

on a navigable stream to recover the possession of land between high and low water mark, from one who is in possession thereof and not claiming rights as a navigator or fisherman.

4530. (§ 1292.) *Boundaries by ways.*—An owner of land bounded by a road or street is presumed to own to the center thereof, but the contrary may be shown.

Larrabee v. Cloverdale, 131 Cal. 99; 63 Pac. 143.

4531. (§ 1293.) *Lateral and subjacent support.*—Each co-terminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the

right of the owner of the adjoining land to make proper and usual excavations on the same for the purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

In re Kelso, 147 Cal. 611; 82 Pac. 241.

4532. (§ 1294.) *Trees whose trunks are wholly on land of one.*—Trees whose trunks stand wholly upon the land of one owner belong exclusively to him, although their roots grow into the land of another.

4533. (§ 1295.) *Line trees.*—Trees whose trunks stand partly on the land of two or more co-terminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

Section 4534. Duties of tenant for life.

“ 4535. *Monuments and fences.*

4534. (§ 1300.) *Duties of tenant for life.*—The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefitting the whole inheritance.

Huddelston v. Washington, 136 Cal. 518; 69 Pac. 146.

4535. (§ 1301.) *Monuments and fences.*—Co-terminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.
2. The fences between them, unless one of them chooses to let his land lie without fencing, in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter

Hoar v. Hennessy, 29 Mont. 253; 74 Pac. 452. This action contemplates that the fence shall lie one-half on the land of each owner, each contributing his share to its erection and maintenance and the ground on which it stands; and the fence may stand on the land of each without any agreement. A division fence erected on a boundary line agreed upon between adjoining properties is properly erected.

TITLE IV.

USES AND TRUSTS.

Section 4536. What uses and trusts may exist.

“ 4537. *Trusts must be in writing.*

“ 4538. *Transfer to one for money paid by another.*

“ 4539. *Purchasers protected.*

“ 4540. *For what purposes express trusts may be created.*

Section 4541. Profits of land liable to creditors in certain cases.

" 4542. *Powers, execution of.*

" 4543. *Trustees of express trusts to have whole estate.*

" 4544. *Author of trust may devise, etc.*

" 4545. *Title of grantor of trust property.*

" 4546. *Interests remaining in grantor of express trust.*

" 4547. *Powers over trust of party interested.*

" 4548. *Effect of omitting trust in conveyance.*

" 4549. *Certain sales, etc., by trustees, void.*

" 4550. *When estate of trustee to cease.*

4536. (§ 1310.) *What uses and trusts may exist.*—Uses and trusts in relation to real property are those only which are specified in this title.

McCurdy v. Otto, 140 Cal. 51; 73 Pac. 748.

4537. (§ 1311.) *Trusts must be in writing.*—No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing.

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law.

Lynch v. Herrig, 32 Mont. 278; 80 Pac. 243. An express trust cannot be based on an oral agreement, and the statute of frauds is inapplicable in the case of resulting trusts. An equitable title to land, which will ripen into a legal title

upon payment of a balance due on the purchase price, is property, and a resulting trust therein may be enforced by a court of equity.

Kimbal v. Tripp, 136 Cal. 634; 69 Pac. 428.

4538. (§ 1312.) *Transfer to one for money paid by another.*—When a transfer of real property is made to one person, and the consideration thereof is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

Lynch v. Herrig, 32 Mont. 274; 80 Pac. 242.

Los Angeles Co. v. Occidental Co., 144 Cal. 533; 78 Pac. 25.

4539. (§ 1313.) *Purchasers protected.*—No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property for value and without notice of the trust.

Chappius v. Blankman, 128 Cal. 365; 60 Pac. 925.

4540. (§ 1314.) *For what purposes express trusts may be created.*—Express trusts may be created for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of title II., of this part; or,

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

Estate of Lux, 149 Cal. 205; 85 Pac. 147.

4541. (§ 1315.) *Profits of land liable to creditors in certain cases.*—When a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the persons for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

4542. (§ 1316.) *Powers, execution of.*—Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power.

4543. (§ 1317.) *Trustees of express trusts to have whole estate.*—Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Estate of Heywood, 148 Cal. 188; 82 Pac. 755.

4544. (§ 1318.) *Author of trust may devise, etc.*—Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates, belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

Sacramento Bank v. Montgomery, 146 Cal. 749; 81 Pac. 138.

4545. (§ 1319.) *Title of grantor of trust property.*—The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Sacramento Bank v. Alcorn, 121 Cal. 383; 53 Pac. 813.

4546. (§ 1320.) *Interests remaining in grantor of express trust.*—Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust or his successors.

4547. (§ 1321.) *Powers over trust of party interested.*—The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, cannot transfer or in any manner dispose of his interest in such trust.

Fatjo v. Swasey, 111 Cal. 637; 44 Pac. 225.

4548. (§ 1322.) *Effect of omitting trust in conveyance.*—Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the office with the grant to the trustee, such grant must be deemed absolute in favor of purchasers from such trustee without notice, and for a valuable consideration.

4549. (§ 1323.) *Certain sales, etc., by trustees, void.*—Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

Estate of Sanford, 136 Cal. 105; 68 Pac. 494.

4550. (§ 1324.) *When estate of trustee to cease.*—When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.

POWERS.

Section 4551. Definition.

“ 4552. *Who to execute powers.*

“ 4553. *Married women.*

“ 4554. *Same.*

“ 4555. *How executed.*

4551. (§ 1330.) *Definition.*—A power, as the term is used in this title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

4552. (§ 1331.) *Who to execute powers.*—A power cannot be executed by any person not capable of disposing of real property.

4553. (§ 1332.) *Married women.*—A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

4554. (§ 1333.) *Same.*—No power can be executed by a married woman before she attains her majority.

4555. (§ 1334.) *How executed.*—A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

PART III.

PERSONAL OR MOVABLE PROPERTY.

TITLE I. PERSONAL PROPERTY IN GENERAL.

II. PARTICULAR KINDS OF PERSONAL PROPERTY.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

4556. (§ 1340.) *By what law governed.*—If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner and is governed by the law of his domicile.

Whitney v. Dodge, 105 Cal. 199; 38 Pac. 636.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I. THINGS IN ACTION.

II. PRODUCTS OF THE MIND.

III. OTHER KINDS OF PERSONAL PROPERTY.

CHAPTER I.

THINGS IN ACTION.

Section 4557. *Things in action defined.*

“ 4558. *Transfer and survivorship.*

4557. (§ 1350.) *Things in action defined.*—A thing in action is a right to recover money or other personal property by a judicial proceeding.

Driscoll v. Driscoll, 143 Cal. 534; 77 Pac. 471.

4558. (§ 1351.) *Transfer and survivorship.*—A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner, it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

Caledonia I. Co. v. N. P. R. Co., 32 Mont. 49; 79 Pac. 545. The right to recover damages with interest for the negligent destruction of property by fire is assignable and passes by subrogation to an insurance company to the extent of the proportion of the loss paid by it to the owner of the property destroyed.

CHAPTER II.

PRODUCTS OF THE MIND.

Section 4559. *How far the subject of ownership.*

“ 4560. *Joint ownership.*

“ 4561. *Transfer.*

“ 4562. *Effect of publication.*

“ 4563. *Subsequent inventor, author, etc.*

“ 4564. *Private writings.*

4559. (§ 1360.) *How far the subject of ownership.*—The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

4560. (§ 1361.) *Joint ownership.*—Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions.
2. If it is not single, in proportion to the contribution of each.

4561. (§ 1362.) *Transfer.*—The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

4562. (§ 1363.) *Effect of publication.*—If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this state is concerned.

4563. (§ 1364.) *Subsequent inventor, author, etc.*—If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

4564. (§ 1365.) *Private writings.*—Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER III.

OTHER KINDS OF PERSONAL PROPERTY.

Section 4565. Trade marks.

“ 4566. *Good will of business.*

“ 4567. *Same.*

“ 4568. *Title of deeds.*

4565. (§ 1370.) *Trade marks.*—One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol, or name, which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

Hainque v. Cyclops Works, 136 Cal. 352; 68 Pac. 1014.

4566. (§ 1371.) *Good will of business.*—Good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

Dodge Co. v. Dodge, 145 Cal. 388; 78 Pac. 879.

4567. (§ 1372.) *Same.*—The good will of a business is property, transferable like any other.

Yoder v. Reynolds, 28 Mont. 193; 72 Pac. 418. A debtor transferred his stock of goods by an itemized bill of sale, which did not include the good will of the business, and on an issue of fraud towards creditors in the conveyance, evidence of such good will was immaterial. Merchants Co. v. Sterling, 124 Cal. 43; 57 Pac. 468.

4568. (§ 1373.) *Title of deeds.*—Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom for the time being, such title may be vested, and pass with the title.

PART IV.

ACQUISITION OF PROPERTY.

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|-------|-------|--|
| TITLE | I. | MODES IN WHICH PROPERTY MAY BE ACQUIRED. |
| | II. | OCCUPANCY. |
| | III. | ACCESSION. |
| | IV. | TRANSFER. |
| | V. | HOMESTEADS. |
| | VI. | WILLS. |
| | VII. | SUCCESSION. |
| | VIII. | WATER RIGHTS. |

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

4569. (§ 1380.) *Property, how acquired.*—Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.
4. Will; or,
5. Succession.

In re Burdick, 112 Cal. 394; 44 Pac. 734.

TITLE II.

OCCUPANCY.

Section 4570. *Simple occupancy.*

“ 4571. *Prescription.*

4570. (§ 1390.) *Simple occupancy*.—Occupancy for any period confers a title sufficient against all except the state, and those who have title by prescription, accession, transfer, will, or succession.

Pendola v. Ramm, 138 Cal. 520; 71 Pac. 624.

4571. (§ 1391.) *Prescription*.—Occupancy for the period prescribed by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

State v. Auchard, 22 Mont. 16; 55 Pac. 362.

Wutchumna Co. v. Ragle, 148 Cal. 764; 84 Pac. 162.

TITLE III.

ACCESSION.

CHAPTER I. TO REAL PROPERTY.

II. TO PERSONAL PROPERTY.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

Section 4572. *Fixtures*.

“ 4573. *Alluvion*.

“ 4574. *Sudden removal of bank*.

“ 4575. *Islands in navigable streams*.

“ 4576. *In unnavigable streams*.

“ 4577. *Islands formed by division of stream*.

“ 4578. *What fixtures tenant may remove*.

4572. (§ 1400.) *Fixtures*.—When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in § 4578 (1406), belongs to the owner of the land, unless he chooses to require the former to remove it.

West Coast Co. v. Apfield, 86 Cal. 339; 24 Pac. 993.

4573. (§ 1401.) *Alluvion*.—Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

4574. (§ 1402.) *Sudden removal of bank*.—If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

4575. (§ 1403.) *Islands, in navigable streams.*—Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

Glassell v. Hansen, 149 Cal. 513; 87 Pac. 200.

4576. (§ 1404.) *In unnavigable streams.*—An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

4577. (§ 1405.) *Islands formed by division of stream.*—If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

4578. (§ 1406.) *What fixtures tenants may remove.*—A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Pomeroy v. Bell, 118 Cal. 636; 50 Pac. 683.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

Section 4579. *Accession by uniting several things.*

“ 4580. *Principal part, what.*

“ 4581. *Same.*

“ 4582. *Uniting materials and workmanship.*

“ 4583. *Inseparable materials.*

“ 4584. *Materials of several owners.*

“ 4585. *Willful trespassers.*

“ 4586. *Owner may elect between the thing and its value.*

“ 4587. *Wrongdoer liable in damages.*

4579. (§ 1410.) *Accession by uniting several things.*—When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

Byrne v. McGrath, 130 Cal. 320; 62 Pc. 559.

4580. (§ 1411.) *Principal part, what.*—That part is deemed to be the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is

the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

4581. (§ 1412.) *Same.*—If neither part can be considered the principal, within the rule prescribed by the last section, the more valuable, or if the values are nearly equal, the most considerable in bulk, is to be deemed the principal part.

4582. (§ 1413.) *Uniting materials and workmanship.*—If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

4583. (§ 1414.) *Inseparable materials.*—Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

4584. (§ 1415.) *Materials of several owners.*—When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made, may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Arnold v. Producers' Co., 128 Cal. 641; 61 Pac. 283.

4585. (§ 1416.) *Willful trespassers.*—The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

4586. (§ 1417.) *Owner may elect between the thing and its value.*—In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or, where he is entitled to the product, the value thereof in place of the product.

4587. (§ 1418.) *Wrongdoer liable in damages.*—One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

TITLE IV.

TRANSFER.

- CHAPTER I. TRANSFERS IN GENERAL.
- II. TRANSFER OF REAL PROPERTY.
- III. TRANSFER OF PERSONAL PROPERTY.
- IV. RECORDING TRANSFERS OF REAL PROPERTY.
- V. UNLAWFUL TRANSFERS.

CHAPTER I.

TRANSFERS IN GENERAL.

- ARTICLE I. DEFINITION OF TRANSFER.
- II. WHAT MAY BE TRANSFERRED.
- III. MODE OF TRANSFER.
- IV. INTERPRETATION OF GRANTS.
- V. EFFECT OF TRANSFER.

ARTICLE I.

DEFINITION OF TRANSFER.

Section 4588. Transfer, what.

“ 4589. *Voluntary transfer.*

4588. (§ 1430.) *Transfer, what.*—Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

Enscoe v. Fletcher, 1 C. App. 664; 82 Pac. 1075.

4589. (§ 1431.) *Voluntary transfer.*—A voluntary transfer is an executed contract subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

Curtin v. Kowalski, 145, Cal. 434; 78 Pac. 962.

ARTICLE II.

WHAT MAY BE TRANSFERRED.

Section 4590. What may be transferred.

“ 4591. *Possibility.*

“ 4592. *Right of re-entry can be transferred.*

“ 4593. *Owner ousted of possession may transfer.*

4590. (§ 1440.) *What may be transferred.*—Property of any kind may be transferred, except as otherwise provided by this article.

Curtin v. Kowalski, 145 Cal. 434; 78 Pac. 962.

4591. (§ 1441.) *Possibility.*—A mere possibility, not coupled with an interest, can not be transferred.

Estate of Ryder, 141 Cal. 370; 74 Pac. 993.

4592. (§ 1442.) *Right of re-entry can be transferred.*—A right of re-entry, or of re-possession for breach of condition subsequent, can be transferred.

4593. (§ 1443.) *Owner ousted of possession may transfer.*—Any person claiming title to real property in the adverse possession of another may transfer it with the same effect as if in actual possession.

ARTICLE III.

MODE OF TRANSFER.

Section 4594. *When oral.*

“ 4595. *Grant, what.*

“ 4596. *Delivery necessary.*

“ 4597. *Date.*

“ 4598. *Delivery to grantee is necessarily absolute.*

“ 4599. *Delivery in escrow.*

“ 4600. *Surrendering or canceling grant does not re-convey.*

“ 4601. *Constructive delivery.*

4594. (§ 1450.) *When oral.*—A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

Bickerdike v. State, 144 Cal. 691; 78 Pac. 270.

4595. (§ 1451.) *Grant, what.*—A transfer in writing is called a grant, or conveyance, or bill of sale. The term “grant,” in this and the next two articles, includes all these instruments, unless it is specially applied to real property.

Driscoll v. Driscoll, 143 Cal. 536; 77 Pac. 471.

4596. (§ 1452.) *Delivery necessary.*—A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

Whitney v. American Co., 127 Cal. 467; 59 Pac. 897.

4597. (§ 1453.) *Date.*—A grant duly executed is presumed to have been delivered at its date.

Daneri v. Gazzola, 2 C. App. 352; 83 Pac. 455.

4598. (§ 1454.) *Delivery to grantee is necessarily absolute.*—A grant cannot be delivered to the grantee conditionally. De-

livery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery is made.

Kenney v. Parks, 137 Cal. 531; 70 Pac. 556.

4599. (§ 1455.) *Delivery in escrow.*—A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

Keyes v. Myers, 147 Cal. 705; 82 Pac. 305.

4600. (§ 1456.) *Surrendering of canceling grant does not reconvey.*—Re-delivering a grant of real property to the grantor, or canceling it, does not operate to re-transfer the title.

Keyes v. Myers, 147 Cal. 705; 82 Pac. 305.

4601. (§ 1457.) *Constructive delivery.*—Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

ARTICLE IV.

INTERPRETATION OF GRANTS.

Section 4602. *Grants, how interpreted.*

“ 4603. *Limitations, how controlled.*

“ 4604. *Recitals, when resorted to.*

“ 4605. *Interpretation against grantor.*

“ 4606. *Irreconcilable provisions.*

“ 4607. *Meaning of “heirs” and “issue,” in certain remainders.*

“ 4608. *Words of inheritance unnecessary.*

4602. (§ 1470.) *Grants, how interpreted.*—Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided in this article.

Pellissier v. Corker, 103 Cal. 518; 37 Pac. 465.

4603. (§ 1471.) *Limitations, how controlled.*—A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Watson v. Sutro, 86 Cal. 522; 24 Pac. 172.

4604. (§ 1472.) *Recitals, when resorted to.*—If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

4605. (§ 1473.) *Interpretation against grantor.*—A grant is to be interpreted in favor of the grantee, except that a reserva-

tion in any grant, and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor.

Adams v. Hopkins, 144 Cal. 37; 77 Pac. 712.

4606. (§ 1474.) *Irreconcilable provisions.*—If several parts of a grant are absolutely irreconcilable, the former part prevails.

Barnett v. Barnett, 104 Cal. 300; 37 Pac. 1049.

4607. (§ 1475.) *Meaning of "heirs" and "issue," in certain remainders.*—Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or, in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

4608. (§ 1476.) *Words of inheritance unnecessary.*—Words of inheritance or succession are not requisite to transfer a fee in real property.

Sears v. Ackerman, 138 Cal. 586; 72 Pac. 171.

ARTICLE V.

EFFECT OF TRANSFER.

Section 4609. *What title passes.*

" 4610. *Incidents.*

" 4611. *Grant may inure to the benefit of stranger.*

4609. (§ 1490.) *What title passes.*—A transfer vests in the transferee all the actual title to the thing transferred which the transferer then has, unless a different intention is expressed or is necessarily implied.

Curtin v. Kowalski, 145 Cal. 434; 78 Pac. 962.

4610. (§ 1491.) *Incidents.*—The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

Jones v. Sanders, 138 Cal. 411; 71 Pac. 506.

4611. (§ 1492.) *Grant may inure to the benefit of stranger.*—A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I. MODE OF TRANSFER.

II. EFFECT OF TRANSFER.

ARTICLE I.

MODE OF TRANSFER.

Section 4612. *Requisites for transfer of certain estates.*

" 4613. *Form of grant.*

" 4614. *Grant by married women, how acknowledged.*

Section 4615. Power of attorney of married women, how acknowledged.

“ 4616. *Attorney in fact, how must execute for principal.*

“ 4617. *Former name of owner.*

4612. (§ 1500.) *Requisites for transfer of certain estates.—*

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing subscribed by the party disposing of the same, or by his agent thereunto authorized by writing.

Smith v. Denniff, 24 Mont. 22; 60

Farmers Bank v. Purdy, 130 Cal. 457; 62 Pac. 738.

4613. (§ 1501.) *Form of grant.*—A grant of an estate in real property may be made in substance as follows:

1. “I, A. B., in consideration of——dollars now paid, grant to C. D. all the real property situated in (insert name of county) county, State of Montana, bounded (or described) as follows: (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, as, for instance, ‘The Norris ranch’).

“Witness my hand this (insert day) day of (insert month) 18—
A. B.”

Hill v. McCoy, 1 C. App. 162; 81 Pac. 1015.

4614. (§ 1502.) *Grant by married women, how acknowledged.*—No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by §§ 4660 (1606) and 4665 (1611).

Loupe v. Smith, 123 Cal. 494; 56 Pac. 254.

4615. (§ 1503.) *Power of attorney of married women, how acknowledged.*—A power of attorney, of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose unless acknowledged by her in the manner provided in §§ 4660 (1606) and 4665 (1611).

4616. (§ 1504.) *Attorney in fact, how must execute for principal.*—When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

Shackleton v. Allen Church, 25 Mont. 425; 65 Pac. 429. A second mortgage of church property was executed by the president and secretary of the trustees individually, and recorded. It was not necessary, in order to foreclose their equitable right to redeem, to make the second mortgagees parties to an action to

foreclose a prior mortgage on the property, because the second mortgage was not constructive notice that it was on the property. A deed executed by an agent or attorney in fact should be executed in the name of the principal.

Landt v. Schneider, 31 Mont. 20; 77 Pac. 309.

4617. (§ 1505.) *Former name of owner.*—Any person in whom the title of real estate is vested, who shall afterwards, from

any cause, have his or her name changed, shall, in any conveyances of said real estate so held, set forth the name in which he or she derived title to said real estate, and a failure to comply with the provisions of this section, shall subject any such person to a penalty of fifty dollars, to be collected by the county attorney of the county in which the real estate is situated, and by him paid into the treasury of said county for the benefit of the common schools thereof.

ARTICLE II.

EFFECT OF TRANSFER.

- Section 4618. What easements pass with property.*
 “ 4619. *When fee simple title is presumed to pass.*
 “ 4620. *Subsequently acquired title passes by operation of law.*
 “ 4621. *Grant, how far conclusive on purchasers.*
 “ 4622. *Conveyance by owner for life or for years.*
 “ 4623. *Grant made on condition subsequent.*
 “ 4624. *Grant on condition precedent.*
 “ 4625. *Attornment of tenant, when unnecessary.*
 “ 4626. *Boundary by highway, what passes.*
 “ 4627. *Implied covenants.*
 “ 4628. *What the term “incumbrances” embraces.*
 “ 4629. *Lineal and collateral warranties abolished.*

4618. (§ 1510.) *What easements pass with property.*—A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

Pogue v. Collins, 146 Cal. 440; 80 Pac. 623.

4619. (§ 1511.) *When fee simple is presumed to pass.*—A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

Burnett v. Piercy, 149 Cal. 190; 86 Pac. 603.

4620. (§ 1512.) *Subsequently acquired title passes by operation of law.*—Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title, or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

Estate of Ryder, 141 Cal. 371; 74 Pac. 993.

4621. (§ 1513.) *Grant, how far conclusive on purchasers.*—Every grant of an estate in real property is conclusive against the

grantor, also against every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that is first duly recorded.

Commercial Bank v. Pritchard, 126 Cal. 604; 59 Pac. 130.

4622. (§ 1514.) *Conveyances by owner for life or for years.*—A grant made by an owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

4623. (§ 1515.) *Grant made on condition subsequent.*—When a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant must re-convey the property to the grantor or his successors by grant, duly acknowledged for record.

Quatman v. McCray, 128 Cal. 291; 60 Pac. 855.

4624. (§ 1516.) *Grant on condition precedent.*—An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

4625. (§ 1517.) *Attornment of tenant, when unnecessary.*—When real property is occupied by a tenant a grant of any estate therein, by his landlord, is valid without an attornment of the tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, is binding upon the grantee; and the tenant is not liable to the grantee for any breach of the condition of the lease until he has had notice of the grant.

4626. (§ 1518.) *Boundary by highway, what passes.*—A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front of the center thereof, unless a different intent appears from the grant.

Montgomery v. Railway Co., 104 Cal. 188; 37 Pac. 786.

4627. (§ 1519.) *Implied covenants.*—From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple or possessory title is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee.
2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor or any person claiming under him.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Estate of Porter, 138 Cal. 624; 72 Pac. 173.

4628. (§ 1520.) *What the term "incumbrances" embraces.*—The term "incumbrances" includes taxes, assessments and all liens upon real property.

Weber v. McCleverty, 149 Cal. 320; 86 Pac. 706.

4629. (§ 1521.) *Lineal and collateral warranties abolished.*—Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

CHAPTER III.

TRANSFER OF PERSONAL PROPERTY.

ARTICLE I. MODE OF TRANSFER.

II. WHAT OPERATES AS A TRANSFER.

III. GIFTS.

ARTICLE I.

MODE OF TRANSFER.

Section 4630. When must be in writing.

" 4631. *Transfer by sale, etc.*

4630. (§ 1530.) *When must be in writing.*—An interest in an existing trust can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

4631. (§ 1531.) *Transfer by sale, etc.*—The mode of transferring other personal property by sale is regulated by the title on that subject, in division third of this code.

ARTICLE II.

WHAT OPERATES AS A TRANSFER.

Section 4632. Transfer of title under sale.

" 4633. *Transfer of title under executory agreement for sale.*

" 4634. *When buyer acquires better title than seller has.*

4632. (§ 1540.) *Transfer of title under sale.*—The title to personal property, sold or exchanged, passes to the buyer when—

ever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

Adam v. McKnight, 32 Mont. 353; 80 Pac. 615. The actual passing of a title, as between the parties to a contract of sale of personal property, depends upon the intention of the parties and the identification of the thing sold.
Gardiner v. McDonogh, 147 Cal. 322; 81 Pac. 964.

4633. (§ 1541.) *Transfer of title under executory agreement for sale.*—Title is transferred by an executory agreement for the sale or exchange of personal property only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance.

Hewes v. Germain Co., 106 Cal. 446; 39 Pac. 853.

4634. (§ 1542.) *When buyer acquires better title than seller has.*—Where the possession of personal property together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind, and does rescind, the transfer made by him.

Goldstone v. Merchants' Co., 123 Cal. 632; 56 Pac. 776.

ARTICLE III.

GIFTS.

Section 4635. Gifts defined.

“ 4636. *Gifts, how made.*

“ 4637. *Gift, how revocable.*

“ 4638. *Gift in view of death, what.*

“ 4639. *When gift presumed to be in view of death.*

“ 4640. *Revocation of gift in view of death.*

“ 4641. *Effect of will upon gift.*

“ 4642. *When treated as legacy.*

4635. (§ 1550.) *Gifts defined.*—A gift is a transfer of personal property, made voluntarily, and without consideration.

Collins v. Maude, 144 Cal. 294; 77 Pac. 945.

4636. (§ 1551.) *Gifts, how made.*—A verbal gift is not valid unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Noble v. Garden, 146 Cal. 230; 79 Pac. 883.

4637. (§ 1552.) *Gift, how revocable.*—A gift, other than a gift in view of death, cannot be revoked by the giver.

4638. (§ 1553.) *Gift in view of death, what.*—A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

Zeller v. Jordan, 105 Cal. 147; 38 Pac. 640.

4639. (§ 1554.) *When gift presumed to be in view of death.*—A gift made during the last illness of the giver, or under circumstances which would impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Knight v. Tripp, 121 Cal. 677; 54 Pac. 267.

4640. (§ 1555.) *Revocation of gift in view of death.*—A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time.

Adams v. Atherton, 132 Cal. 166; 64 Pac. 283.

4641. (§ 1556.) *Effect of will upon gift.*—A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses intention to revoke the gift.

Adams v. Atherton, 132 Cal. 166; 64 Pac. 283.

4642. (§ 1557.) *When treated as legacy.*—A gift in view of death must be treated as a legacy, so far as relates to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I. WHAT MAY BE RECORDED.

II. MODE OF RECORDING.

III. PROOF OF ACKNOWLEDGMENTS OF INSTRUMENTS.

IV. EFFECT OF RECORDING, OR OF THE WANT THEREOF.

ARTICLE I.

WHAT MAY BE RECORDED.

Section 4643. *What may be recorded.*

“ 4644. *Judgments may be recorded without acknowledgment.*

“ 4645. *Letters patent may be recorded without acknowledgment.*

“ 4646. *Instruments must be acknowledged, except, etc.*

“ 4647. *Same.*

“ 4648. *Transfers in trust, etc.*

“ 4649. *Fees of recorder to be endorsed.*

4643. (§ 1570.) *What may be recorded.*—Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

Kent v. Williams, 146 Cal. 8; 79 Pac. 527.

4644. (§ 1571.) *Judgments may be recorded without acknowledgment.*—Judgments affecting the title to or possession

of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

4645. (§ 1572.) *Letters patent may be recorded without acknowledgment.*—Letters patent from the United States, or from the state of Montana, executed and authenticated pursuant to existing law, may be recorded without acknowledgment or further proof; and where letters patent have been lost, or are beyond the control of any party deraigning title therefrom, or for any reason they remain unrecorded, any person claiming title thereunder may cause a transcript of the copy of such letters patent kept by the government issuing the same, duly certified by the officer or individual having lawful custody of such copy, to be recorded in lieu of the original; and such recorded copy shall have prima facie the same force and effect as the original, for title or for evidence, until the said original letters patent be recorded.

4646. (§ 1573.) *Instruments may be acknowledged, except, etc.*—Before an instrument can be recorded, unless it belongs to the class provided for in either §§ 4644 (1571), 4645 (1572), 4676 (1622) or 4677 (1623), its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in §§ 4672 (1618) and 4673 (1619), and the acknowledgment or proof certified in the manner prescribed by article III., of this chapter.

Emeric v. Alvarado, 90 Cal. 477; 27 Pac. 356.

4647. (§ 1574.) *Same.*—An instrument, proved and certified pursuant to §§ 4672 (1618) and 4673 (1619), may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

4648. (§ 1575.) *Transfers in trust, etc.*—Transfers of property in trust for the benefit of creditors, and transfers or liens on property by way of mortgage, are required to be recorded in the cases specified in the titles on the special relation of debtor and creditor and the chapter on mortgages, respectively.

Cardenas v. Miller, 108 Cal. 256; 39 Pac. 783.

4649. (§ 1576.) *Fees of recorder to be endorsed.*—The county clerk must in all cases indorse the amount of his fee for recording the instrument recorded.

ARTICLE II.

MODE OF RECORDING.

Section 4650. In what office.

“ 4651. *Instrument, when deemed recorded.*

“ 4652. *Books of record.*

“ 4653. *Duties of recorder.*

4650. (§ 1590.) *In what office.*—Instruments entitled to be recorded must be recorded by the county clerk of the county in which the real property affected thereby is situated.

4651. (§ 1591.) *Instrument, when deemed recorded.*—An instrument is deemed to be recorded, when, being duly acknowledged or proved, and certified, it is deposited in the county clerk's office with the proper officer for record.

Cady v. Purser, 131 Cal. 556; 63 Pac. 844.

4652. (§ 1592.) *Books of record.*—Grants, absolute in terms, are to be recorded in one set of books, and mortgages, and securities in the nature of mortgages, in another.

Kent v. Williams, 146 Cal. 10; 79 Pac. 527.

4653. (§ 1593.) *Duties of recorder.*—The duties of county clerks, in respect to recording instruments, are prescribed by the Political Code.

ARTICLE III.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

Section 4654. By whom acknowledgments may be taken in this state.

- " 4655. *Same.*
- " 4656. *By whom taken without the state.*
- " 4657. *By whom taken without the United States.*
- " 4658. *Deputy can take acknowledgment.*
- " 4659. *Requisites for acknowledgments.*
- " 4660. *Acknowledgment by married women.*
- " 4661. *Same.*
- " 4662. *Officer must indorse certificate.*
- " 4663. *General form of certificate.*
- " 4664. *Form of acknowledgment by corporation.*
- " 4665. *Form of certificate of acknowledgment by married women.*
- " 4666. *Form of certificate of acknowledgment by attorney in fact.*
- " 4667. *Officers must affix their signatures.*
- " 4668. *Certificate of authority of justices in certain cases.*
- " 4669. *Proof of execution, how made.*
- " 4670. *Witness must be personally known to officer.*
- " 4671. *Witness must prove, what.*
- " 4672. *Handwriting may be proved, when.*
- " 4673. *Evidence must prove, what.*
- " 4674. *Certificate of proof.*
- " 4675. *Officers authorized to do certain things.*
- " 4676. *When instrument is improperly certified, party may have action to correct error.*

Section 4677. *In certain cases parties interested may obtain judgment of proof of an instrument.*

" 4678. *Effect of judgment in such action.*

" 4679. *Conveyances heretofore made to be governed by then existing laws.*

" 4680. *Recording, and as evidence, to be governed by then existing laws.*

" 4681. *Certified copies as evidence. Records, what notice deemed from.*

" 4682. *Deeds heretofore executed valid though not acknowledged.*

4654. (§ 1600.) *By whom acknowledgments may be taken in this state.*—The proof of acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court or a judge of the district court.

4655. (§ 1601.) *Same.*—The proof or acknowledgment of an instrument may be made in this state within the city, county or district for which the officer was elected or appointed, before either:

1. A clerk of a court of record; or,
2. A county clerk; or,
3. A notary public; or,
4. A justice of the peace.

Malone v. Bosch, 104 Cal. 682; 38 Pac. 516.

4656. (§ 1602.) *By whom taken without the state.*—The proof of acknowledgment of an instrument may be made without this state, but within the United States, and within the jurisdiction of the officer, before either:

1. A justice, judge, or clerk of any court of record of the United States; or,
2. A justice, judge, or clerk of any court of record of any state or territory; or,
3. A commissioner appointed by the governor of this state for that purpose; or,
4. A notary public; or,
5. Any other officer of the state or territory where the acknowledgment is made authorized by its laws to take such proof or acknowledgment.

4657. (§ 1603.) *By whom taken without the United States.*—The proof or acknowledgment of an instrument may be made without the United States, before either:

1. A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

2. A consul, vice consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,

3. A judge of a court of record of the country where the proof or acknowledgment is made; or,

4. Commissioners appointed for such purposes by the governor of the state, pursuant to special statutes; or,

5. A notary public.

Gibson v. Wheeler, 110 Cal. 245; 42 Pac. 810.

4658. (§ 1604.) *Deputy can take acknowledgment.*—When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

4659. (§ 1605.) *Requisites for acknowledgments.*—The acknowledgment of an instrument must not be taken unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in, and who executed the instrument; or if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

Joost v. Craig, 131 Cal. 507; 63 Pac. 840.

4660. (§ 1606.) *Acknowledgment by married women.*—The acknowledgment of a married woman to an instrument purporting to be executed by her, must be taken the same as that of any other person.

4661. (§ 1607.) *Same.*—A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner.

Loupe v. Smith, 123 Cal. 493; 56 Pac. 254.

4662. (§ 1608.) *Officer must endorse certificate.*—An officer taking the acknowledgment of an instrument must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed.

4663. (§ 1609.) *General form of certificate.*—The certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

State of _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____, known to me (proved to me on oath of _____), to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Joost v. Craig, 131 Cal. 508; 63 Pac. 840.

4664. (§ 1610.) *Form of acknowledgment by corporation.*—The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the president (or secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

4665. (§ 1611.) *Form of certificate of acknowledgment by married women.*—The certificate of acknowledgment by a married woman must be substantially in the form prescribed in § 4663 (1609.)

Loupe v. Smith, 123 Cal. 493; 56 Pac. 254.

4666. (§ 1612.) *Form of certificate of acknowledgment by attorney in fact.*—The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of _____, }
County of _____, } ss.

On this _____ day of _____, in the year _____, before me (here insert name and quality of the officer), personally appeared _____, known to me (or proved to me on the oath of _____) to be the person whose name is subscribed to the within instrument as the attorney in fact of _____; and acknowledged to me that he subscribed the name of _____ thereto as principal, and his own name as attorney in fact.

4667. (§ 1613.) *Officers must affix their signatures.*—Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Emeric v. Alvarado, 90 Cal. 478; 27 Pac. 356.

4668. (§ 1614.) *Certificate of authority of justices in certain cases.*—The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the county in which the justice resides, setting forth that such justice, at the time of making such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

4669. (§ 1615.) *Proof of execution, how made.*—Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness, or,
3. By other witnesses, in cases mentioned in § 4672 (1618).

4670. (§ 1616.) *Witness must be personally known to officer.*—If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

4671. (§ 1617.) *Witness must prove, what.*—The subscribing witness must prove that the person whose name is subscribed to the instrument as a party, is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

4672. (§ 1618.) *Handwriting may be proved, when.*—The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,
2. When the parties and all the subscribing witnesses are non-residents of the state; or,
3. When the place of their residence is unknown to the party desiring proof, and can not be ascertained by the exercise of due diligence; or,
4. When the subscribing witness conceals himself or can not be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or,

5. In case of the continued failure or refusal of the witness to testify for the space of one hour, after his appearance.

4673. (§ 1619.) *Evidence must prove, what.*—The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness.

4674. (§ 1620.) *Certificate of proof.*—An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters re-

quired by law to be done, or known by him, or proved before him on the proceeding, together with the names of all the witnesses examined before him, their place of residence, respectively, and the substance of their testimony.

4675. (§ 1621.) *Officers authorized to do certain things.*—Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations, as prescribed in the Code of Civil Procedure.
2. To employ and swear interpreters.
3. To issue subpoenas, as prescribed in the Code of Civil Procedure.
4. To punish for contempt, as prescribed in the Code of Civil Procedure.

The civil damages and forfeiture to the party aggrieved are prescribed in the Code of Civil Procedure.

4676. (§ 1622.) *When instrument is improperly certified, party may have action to correct error.*—When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Poledori v. Newman, 116 Cal. 376; 48 Pac. 325.

4677. (§ 1623.) *In certain cases parties interested may obtain judgment of proof of an instrument.*—Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

4678. (§ 1624.) *Effect of judgment in such action.*—A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles such instrument to record, with the like effect as if acknowledged.

4679. (§ 1625.) *Conveyances heretofore made to be governed by then existing laws.*—The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this code goes into effect, executed, acknowledged, proved, or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

Westheimer v. Goodkind, 24 Mont. 100; 60 Pac. 814.

4680. (§ 1626.) *Recording, and as evidence, to be governed by then existing laws.*—All conveyances of real property made before this code goes into effect and acknowledged or proved according to the laws in force at the time of such making and acknowledgment of proof, have the same force as evidence, and may

be recorded, in the same manner and with the like effect, as conveyances executed and acknowledged in pursuance of this chapter.

4681. (§ 1627.) *Certified copies as evidence. Records, what notice deemed from.*—Any instrument affecting real property, which was, previous to the date this code takes effect, copied into the proper book, kept in the office of the county clerk, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and incumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgment thereof, or the absence of any such certificate; but nothing herein shall be deemed to affect the rights of purchasers or incumbrancers previous to that date. Duly certified copies of the record of any such instrument may be read in evidence, with like effect as copies of an instrument duly acknowledged and recorded, *provided* it be first shown that the original instrument was genuine.

4682. *Deeds heretofore executed valid though not acknowledged.*—All deeds to real property heretofore executed in this State, or any State or Territory of the United States, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this State, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns. [*Act approved March 2nd, 1899, § 1.*] (6th Sess. 145.)

ARTICLE IV.

EFFECT OF RECORDING, OR OF THE WANT THEREOF.

Section 4683. Record, where and to whom notice.

“ 4684. *Conveyances to be recorded, or are void, etc.*

“ 4685. *Conveyances defined.*

“ 4686. *Powers of attorney, how revoked.*

“ 4687. *Unrecorded instruments valid between the parties.*

4683. (§ 1640.) *Record, where and to whom notice.*—Every conveyance of real property, acknowledged or proved, and certified and recorded as prescribed by law, from the time it is filed with the county clerk for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

Mullins v. Butte H. Co., 25 Mont. 538
65 Pac. 1009.

Trerise v. Bottego, 32 Mont. 248; 79
Pac. 1058.

Cornish v. Wolverton, 32 Mont. 475;
81 Pac. 10. A mortgage is a conveyance

within the meaning of the record laws
though it is a conveyance of a chattel
interest only.

Kent v. Williams, 146 Cal. 8; 79 Pac.
527.

4684. (§ 1641.) *Conveyances to be recorded, or are void, etc.*—Every conveyance of real property other than a lease for a term not exceeding one year, is void against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

Estate of Tuohy, 23 Mont. 308; 58 Pac. 723.

Mullins v. Butte H. Co., 25 Mont. 538; 65 Pac. 1009.

Sheldon v. Powell, 31 Mont. 254; 78 Pac. 491. All unrecorded deeds and conveyances, except leases for one year, are void as to subsequent purchasers and in-

cumbrancers in good faith and for a valuable consideration.

Trerise v. Bottego, 32 Mont. 248; 79 Pac. 1058.

Cornish v. Woolverton, 32 Mont. 475; 81 Pac. 10.

Bell v. Pleasant, 145 Cal. 413; 78 Pac. 957.

4685. (§ 1642.) *Conveyances defined.*—The term “conveyance,” as used in § § 4683 (1640) and 4684 (1641), embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged, or incumbered, or by which the title to real property may be affected, except wills.

Estate of Tuohy, 23 Mont. 308; 58 Pac. 723.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513. A mortgage is a conveyance of a chattel interest.

Adams v. Hopkins, 144 Cal. 36; 77 Pac. 712.

Cornish v. Woolverton, 32 Mont. 475; 81 Pac. 10.

4686. (§ 1643.) *Powers of attorney, how revoked.*—No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

4687. (§ 1644.) *Unrecorded instruments valid between the parties.*—An unrecorded instrument is valid as between the parties and those who have notice thereof.

Mullins v. Butte H. Co., 25 Mont. 538; 65 Pac. 1009.

Sheldon v. Powell, 31 Mont. 254; 78 Pac. 491.

Bell v. Pleasant, 145 Cal. 413; 78 Pac. 957.

CHAPTER V.

UNLAWFUL TRANSFERS.

Section 4688. *Certain instruments void against purchasers, etc.*

“ 4689. *Not void against purchaser having notice, unless fraud is mutual.*

“ 4690. *Power to revoke, when deemed executed.*

“ 4691. *Same.*

“ 4692. *Purchaser in good faith not affected.*

“ 4693. *Other provisions.*

4688. (§ 1650.) *Certain instruments void against purchasers, etc.*—Every instrument, other than a will, affecting an estate

in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

4689. (§ 1651.) *Not void against purchaser having notice, unless fraud is mutual.*—No instrument is to be avoided under the last section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made was a privy to the fraud intended.

4690. (§ 1652.) *Power to revoke, when deemed executed.*—Where a power to revoke or modify an instrument affecting the title to, or enjoyment of, an estate in real property, is reserved to the grantor, or given to any other person, a subsequent grant of, or charge upon, the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

4691. (§ 1653.) *Same.*—Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

4692. (§ 1654.) *Purchaser in good faith not affected.*—The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter.

4693. (§ 1655.) *Other provisions.*—Other provisions concerning unlawful transfers are contained in part II., division fourth, of this code, concerning the special relations of debtor and creditor.

TITLE V.

HOMESTEADS.

CHAPTER I. GENERAL PROVISIONS.

II. HOMESTEAD OF THE HEAD OF A FAMILY.

CHAPTER I.

GENERAL PROVISIONS.

Section 4694. *Homestead, of what it consists.*

“ 4695. *From what it may be carved.*

“ 4696. *Separate property of wife.*

“ 4697. *Exempt from forced sale.*

“ 4698. *Subject to, when.*

- Section 4699. How conveyed or incumbered.*
 “ 4700. *How abandoned.*
 “ 4701. *When declaration effectual.*
 “ 4702. *Proceedings on execution against homestead.*
 “ 4703. *Application for appraisement.*
 “ 4704. *Filing petition.*
 “ 4705. *Service of petition.*
 “ 4706. *Appointment of appraisers.*
 “ 4707. *Oath of appraisers.*
 “ 4708. *Duty of appraisers.*
 “ 4709. *Report.*
 “ 4710. *Setting apart homestead.*
 “ 4711. *When sale ordered.*
 “ 4712. *Amount of bid.*
 “ 4713. *Balance of proceeds.*
 “ 4714. *After sale, money equal to homestead exemption protected.*
 “ 4715. *Compensation of appraisers.*
 “ 4716. *Costs.*
 “ 4717. *Who may select homestead, value of.*
 “ 4718. *Head of family defined.*

4694. (§ 1670.) *Homestead, of what it consists.*—The homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this title provided.

Mitchell v. McCormick, 22 Mont. 252; 56 Pac. 218. A homestead will be protected to the amount of \$2500, though it exceeds such value. A money judgment cannot be impressed as a lien on a homestead without showing that the money was borrowed for the purpose of buying the homestead.

Yerrick v. Higgins, 22 Mont. 505; 57 Pac. 96. Where a declaration of homestead inadvertently included one-sixth more land than allowed the whole claim

was invalid. A declaration of homestead is valid, though the estimated cash value is far in excess of the limit fixed in the statute, provided it contains the other statements which are required.

Vincent v. Vineyard, 24 Mont. 213; 61 Pac. 132. The homestead character is impressed on all the property described in the declaration.

Payne v. Cummings, 146 Cal. 429; 80 Pac. 620.

4695. (§ 1671.) *From what it may be carved.*—If the claimant be married, the homestead may be selected from the property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is head of a family, within the meaning of § 4718 (1694), the homestead may be selected from any of his or her property.

Simonson v. Burr, 121 Cal. 585; 54 Pac. 87.

4696. (§ 1672.) *Separate property of wife.*—The homestead cannot be selected from the separate property of the wife without her consent, shown by her making, or joining in making, the declaration of homestead

Arkle v. Beedie, 141 Cal. 462; 74 Pac. 1033.

4697. (§ 1673.) *Exempt from forced sale.*—The homestead is exempt from execution or forced sale, except as in this title provided.

Vincent v. Vineyard, 24 Mont. 214; 61 Pac. 132.

Gray v. Burnold, 140 Cal. 621; 74 Pac. 303.

4698. (§ 1674.) *Subject to, when.*—The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. Before the declaration of homestead was filed for record, and which constitute liens upon the premises; but no judgments obtained before this code takes effect shall constitute such liens.

2. On debts secured by mechanics', or vendors' liens upon the premises.

3. On debts secured by mortgages on the premises, executed and acknowledged by the husband and wife, or by an unmarried claimant.

4. On debts secured by mortgages on the premises, executed and recorded before the declaration of homestead was filed for record.

American Association v. Burghardt, 19 Mont. 323; 48 Pac. 391. The acknowledgment by the wife was an essential part of the execution of a mortgage of a homestead by the husband and wife. The mortgage was void if such acknowledgment was fatally defective. The abandonment of a homestead does not make valid a mortgage void *ab initio*.

Watterson v. Bonner Co., 19 Mont. 554; 48 Pac. 1108. A homestead can be had in lands belonging to the United States and all improvements including fences belong to the homestead. The

mortgage of a homestead, not signed by the wife, is void.

Mitchell v. McCormick, 22 Mont. 251; 56 Pac. 217.

Yerrick v. Higgins, 22 Mont. 508; 57 Pac. 97.

Vincent v. Vineyard, 24 Mont. 214; 61 Pac. 133. A judgment docketed in 1892 was not a lien on the homestead subject to execution under this section, whatever its value. A mortgage of the homestead in 1895 took precedence to such judgment.

Woodland Bank v. Oberhaus, 125 Cal. 325; 57 Pac. 1070.

4699. (§ 1675.) *How conveyed or incumbered.*—The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

Friermuth v. Steigleman, 130 Cal. 393; 62 Pac. 615.

4700. (§ 1676.) *How abandoned.* A homestead can be abandoned only by a declaration of abandonment, or a grant thereof, executed and acknowledged:

1. By the husband and wife, if the claimant is married.

2. By the claimant if unmarried.

Payne v. Cummings, 146 Cal. 431; 80 Pac. 620.

4701. (§ 1677.) *When declaration effectual.*—A declaration of abandonment is effectual only from the time it is filed in the office in which the homestead was recorded.

Estate of Winslow, 121 Cal. 94; 53 Pac. 362.

4702. (§ 1678.) *Proceedings on execution against homestead.*—When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in § 4698 (1674) is levied upon the homestead, the judgment creditor may

apply to the district court of the county in which the homestead is situated, or a judge thereof, for the appointment of persons to appraise the value thereof

Yerrick v. Higgins, 22 Mont. 507; 57 Pac. 97. The statute establishing the homestead exemption right is mandatory.

Vincent v. Vineyard, 24 Mont. 215; 61 Pac. 133. Judgments not constituting

liens could be enforced under this section, and the execution could be paid from the excess over \$2,500.

Lean v. Givens, 146 Cal. 740; 81 Pac. 128.

4703. (§ 1679.) *Application for appraisal.*—The application must be made upon a verified petition, showing:

1. The fact that an execution has been levied upon the homestead.

2. The name of the claimant.

3. That the value of the homestead exceeds the amount of the homestead exemption.

Vincent v. Vineyard, 24 Mont. 214; 61 Pac. 133. The homestead consists of the

real property described in the declaration although its value exceeds \$2,500.

4704. (§ 1680.) *Filing petition.*—The petition must be filed with the clerk of the district court.

4705. (§ 1681.) *Service of petition.*—A copy of the petition, with a notice of the time and place of hearing, must be served upon the claimant, at least two days before the hearing.

4706. (§ 1682.) *Appointment of appraisers.*—At the hearing the judge may, upon proof of the service of a copy of the petition and notice, and of the facts stated in the petition, appoint three disinterested residents and freeholders of the county to appraise the value of the homestead

Harrier v. Bassford, 145 Cal. 533; 78 Pac. 1038.

4707. (§ 1683.) *Oath of appraisers.*—The persons appointed, before entering upon the performance of their duties, must take an oath to faithfully perform the same.

4708. (§ 1684.) *Duty of appraisers.*—They must view the premises and appraise the value thereof, and if the appraised value exceeds the homestead exemption they must determine whether the land claimed can be divided without material injury.

Brown v. Starr, 79 Cal. 610; 21 Pac. 973.

4709. (§ 1685.) *Report.*—Within fifteen days after their appointment they must make to the judge a report in writing, which report must show the appraised value and their determination upon the matter of a division of the land claimed.

4710. (§ 1686.) *Setting apart homestead.*—If, from the report, it appears to the judge that the land claimed can be divided without material injury, he must, by an order, direct the appraisers to set off to the claimant so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

Brown v. Starr, 79 Cal. 610; 21 Pac. 973.

4711. (§ 1687.) *When sale ordered.*—If, from the report, it appears to the judge that the land claimed exceeds in value the amount of the homestead exemption, and that it cannot be divided, he must make an order directing its sale under execution.

Lean v. Givens, 146 Cal. 744; 81 Pac. 128.

4712. (§ 1688.) *Amount of bid.*—At such sale no bid must be received, unless it exceeds the amount of the homestead exemption.

4713. (§ 1689.) *Balance of proceeds.*—If the sale is made the proceeds thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution.

4714. (§ 1690.) *After sale, money equal to homestead exemption protected.*—The money paid to the claimant is entitled, for the period of six months thereafter, to the same protection against legal process and the voluntary disposition of the husband, which the law gives to the homestead.

4715. (§ 1691.) *Compensation of appraisers.*—The court must fix the compensation of the appraisers, not to exceed three dollars per day each for the time actually engaged.

4716. (§ 1692.) *Costs.*—The execution creditor must pay the costs of these proceedings in the first instance, but in the cases provided for in § § 4710 (1686) and 4711 (1687) the amount so paid must be added as costs on execution, and collected accordingly

4717. (§ 1693.) *Who may select homestead, value of.*—Homesteads may be selected and claimed:

1. Consisting of any quantity of land not exceeding one hundred and sixty acres used for agricultural purposes, and the dwelling house thereon and its appurtenances, and not included in any town plot, city, or village; or,

2. A quantity of land not exceeding in amount one-fourth of an acre, being within a town plot, city, or village, and the dwelling house thereon and its appurtenances. Such homestead, in either case, shall not exceed in value the sum of two thousand five hundred dollars

American Association v. Burghardt, 19 Mont. 323; 48 Pac. 391.

Watterson v. Bonner Co., 19 Mont. 554; 48 Pac. 1108.

Mitchell v. McCormick, 22 Mont. 253; 56 Pac. 218.

Yerrick v. Higgins, 22 Mont. 506; 57 Pac. 96.

Vincent v. Vineyard, 24 Mont. 213; 61 Pac. 132.

Payne v. Cummings, 146 Cal. 429; 80 Pac. 620.

4718. (§ 1694.) *Head of family defined.*—The phrase “head of a family,” as used in this title, includes within its meaning:

1. The husband, when the claimant is a married person.

2. Every person who has residing on the premises with him or her or under his or her care and maintenance, either:

First—His or her minor child, or the minor child of his or her deceased wife or husband.

Second—A minor brother or sister, or the minor child of a deceased brother or sister.

Third.—A father, mother, grandfather, or grandmother.

Fourth—The father, mother, grandfather, or grandmother, of a deceased husband or wife

Fifth—An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves.

Hansen v. Union Bank, 148 Cal. 158 82 Pac. 768.

CHAPTER II.

HOMESTEAD OF THE HEAD OF A FAMILY.

Section 4719. Mode of selection.

“ 4720. *Declaration of homestead.*

“ 4721. *Declaration must be recorded.*

“ 4722. *Tenure by which homestead is held.*

4719. (§ 1700.) *Mode of selection.*—In order to select a homestead, the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead, and file the same for record.

Hansen v. Union Bank, 148 Cal. 158; 82 Pac. 768.

4720. (§ 1701.) *Declaration of homestead.*—The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit.

2. A statement that the person making it is residing on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their actual cash value.

Mitchell v. McCormick, 22 Mont. 252; Vincent v. Vineyard, 24 Mont. 213; 61 Pac. 218.

Yerrick v. Higgins, 22 Mont. 506; 57 Pac. 97. Harris v. Duarte, 141 Cal. 500; 70 Pac. 298.

4721. (§ 1702.) *Declaration must be recorded.*—The declaration must be recorded in the office of the clerk of the county in which the land is situated.

Kennedy v. Gloster, 98 Cal. 148; 32 Pac. 941.

4722. (§ 1703.) *Tenure by which homestead is held.*—From and after the time the declaration is filed for record, the premises therein described constitute a homestead. Upon the death of the person whose property was selected as a homestead, it shall go to his or her heirs or devisees, subject to the use of the widow during her life, if the property selected as a homestead, before

selection, belonged to the husband; and subject to the use of the husband during his life, if the property selected as a homestead before selection belonged to the wife. And in no case shall the homestead be held liable for the debts of the owner, except as provided in this title.

Mitchell v. McCormick, 22 Mont. 253;
56 Pac. 218.

Yerrick v. Higgins, 22 Mont. 508; 57
Pac. 97.

Vincent v. Vineyard, 24 Mont. 213; 61
Pac. 132.

Otto v. Long, 144 Cal. 147; 77 Pac.
885.

TITLE VI.

WILLS.

- CHAPTER I. EXECUTION AND REVOCATION OF WILLS.
II. INTERPRETATION OF WILLS.
III. GENERAL PROVISIONS RELATING TO WILLS.

CHAPTER I.

EXECUTION AND REVOCATION OF WILLS.

- Section 4723. *Who may make a will.*
" 4724. *Will, or part thereof, procured by fraud.*
" 4725. *Who may take by will.*
" 4726. *Written will, how to be executed.*
" 4727. *Definition of an holographic will.*
" 4728. *Witness to add residence.*
" 4729. *Mutual will.*
" 4730. *Competency of subscribing witness.*
" 4731. *Conditional will.*
" 4732. *Gifts to subscribing witnesses void. Creditors
competent witnesses.*
" 4733. *Witness who is a devisee, and who would be en-
titled to share of testator's estate if no will,
entitled to share to amount of devise.*
" 4734. *Will made out of state.*
" 4735. *Subsequent change of domicile.*
" 4736. *Republication by codicil.*
" 4737. *Nuncupative will, how to be executed.*
" 4738. *Requisites of a valid nuncupative will.*
" 4739. *Proof of nuncupative wills.*
" 4740. *Probate of nuncupative wills.*
" 4741. *Written will, how revoked.*
" 4742. *Evidence of revocation.*
" 4743. *Revocation of duplicate.*
" 4744. *Revocation by subsequent will.*
" 4745. *Antecedent not revived by revocation of sub-
sequent will.*
" 4746. *Revocation by marriage and birth of issue.*
" 4747. *Effect of marriage of a man on his will.*

- Section 4748. *Effect of marriage of a woman on her will.*
 “ 4749. *Contract of sale not a revocation.*
 “ 4750. *Mortgage not a revocation of will.*
 “ 4751. *Conveyance, when not a revocation.*
 “ 4752. *When it is a revocation.*
 “ 4753. *Revocation of codicils.*
 “ 4754. *After-born child, unprovided for, to succeed.*
 “ 4755. *Children or issue of children of testator unprovided for by his will*
 “ 4756. *Share of after-born child, out of what part of estate to be paid.*
 “ 4757. *Advancement during lifetime of testator.*
 “ 4758. *Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants*
 “ 4759. *Devisees of land, how construed.*
 “ 4760. *Will to pass rights acquired after the making thereof.*
 “ 4761. *Restriction to devise for charitable uses.*
 “ 4762. *Same.*

4723. (§ 1720.) *Who may make a will.*—Every person over the age of eighteen years of sound mind, may, by last will, dispose of all of his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title VII., of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

4724. (§ 1721.) *Will, or part thereof, procured by fraud.*—A will, or a part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate: and a revocation, procured by the same means, may be declared void.

4725. (§ 1722.) *Who may take by will.*—A testamentary disposition may be made to any person capable of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, unless expressly authorized by statute.

Estate of Royer, 123 Cal. 624; 56 Pac. 461.

4726. (§ 1723.) *Written will, how to be executed.*—Every will, other than a nuncupative will, must be in writing; and every will, other than a holographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

Farleigh v. Kelley, 28 Mont. 430; 72 Pac. 759. When a will is contested, the subscribing witnesses, if present in the county and of sound mind, must be produced and examined. If absent, the

court may receive other evidence, if any can be had, of the facts mentioned in this section.

Estate of Seaman, 146 Cal. 460; 80 Pac. 700.

4727. (§ 1724.) *Definition of an holographic will.*—A holographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this state, and need not be witnessed.

Estate of Fay, 145 Cal. 83; 78 Pac. 340.

4728. (§ 1725.) *Witness to add residence.*—A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

4729. (§ 1726.) *Mutual will.*—A conjoint or mutual will is valid, but it may be revoked by any of the testators, in like manner with any other will.

4730. (§ 1727.) *Competency of subscribing witness.*—If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

In re Klein's Estate, 35 Mont. 209; 88 Pac. 803.

4731. (§ 1728.) *Conditional will.*—A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

4732. (§ 1729.) *Gifts to subscribing witnesses void. Creditors competent witnesses.*—All beneficial devises, legacies, and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

State v. Court, 34 Mont. 105; 85 Pac. 869.

subscribing witness to a will cannot take as a beneficiary under it.

In re Klein's Estate, 35 Mont. 209; 88 Pac. 803. One who was a necessary

Murray v. Tulare Co., 120 Cal. 315; 49 Pac. 563.

4733. (§ 1730.) *Witness who is a devisee, and who would be entitled to share of testator's estate if no will, entitled to share*

to amount of devise.—If a witness, to whom any beneficial devise, legacy, or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

4734. (§ 1731.) *Will made out of state.*—A will of real or personal property, or both, or a revocation thereof made out of this state by a person not having his domicile in this state, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this state, and according to the provisions of this chapter

State v. Court, 34 Mont. 104; 85 Pac. 869. To allow a will executed in another state to probate in this state it must be shown that such will was duly proved, allowed and admitted to probate in the court of such state; that it was executed according to the law of the place where

it was made, or the laws of this state; and that the record is authenticated as required by section 905 of the Revised Statutes of the United States.

Estate of McCauley, 138 Cal. 434; 71 Pac. 512.

4735. (§ 1732.) *Subsequent change of domicile.*—Whenever a will or revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated, as to the validity of its execution, by the law of such place, notwithstanding the testator subsequently changed his domicile to a place by the law of which such will would be void.

4736. (§ 1733.) *Republication by codicil.*—The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

4737. (§ 1734.) *Noncupative will, how to be executed.*—A noncupative will is not required to be written, nor to be declared or attested with any formalities.

4738. (§ 1735.) *Requisites of a valid noncupative will.*—To make a noncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death; or the decedent must have been, at the time, in expectation of immediate death from injury received the same day.

4739. (§ 1736.) *Proof of noncupative wills.*—No proof must be received of any noncupative will, unless it is offered within

six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

4740. (§ 1737.) *Probate of nuncupative wills.*—No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper.

4741. (§ 1738.) *Written will, how revoked.*—Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will, or other writing of a testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

Estate of Wikman 148 Cal. 644; 84 Pac. 212.

4742. (§ 1739.) *Evidence of revocation.*—When a will is canceled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction, must be proved by two witnesses.

4743. (§ 1740.) *Revocation of duplicate.*—The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

4744. (§ 1741.) *Revocation by subsequent will.*—A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

4745. (§ 1742.) *Antecedent not revived by revocation of subsequent will.*—If after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such section will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will was duly republished.

4746. (§ 1743.) *Revocation by marriage and birth of issue.*—If, after having made a will, the testator marries, and has issue of such marriage, born either in his life time or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settle-

ment, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

4747. (§ 1744.) *Effect of marriage of a man on his will.*—If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received.

State v. Court, 34 Mont. 105; 85 Pac. 869.

4748. (§ 1745.) *Effect of marriage of a woman on her will.*—A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

4749. (§ 1746.) *Contract of sale not a revocation.*—An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

4750. (§ 1747.) *Mortgage not a revocation of will.*—A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devises and legacies therein contained must pass, subject to such charge or incumbrance.

4751. (§ 1748.) *Conveyance, when not a revocation.*—A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation, but the will passes the property which would otherwise devolve by succession.

4752. (§ 1749.) *When it is a revocation.*—If the instrument by which an alteration is made of the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

4753. (§ 1750.) *Revocation of codicils.*—The revocation of a will revokes all its codicils.

4754. (§ 1751.) *After-born child, unprovided for, to succeed.*—Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

State v. Court, 34 Mont. 105; 85 Pac. 869.

Estate of Smith, 145 Cal. 120; 78 Pac. 369.

4755. (§ 1752.) *Children or issue of children of testator unprovided for by his will.*—When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

State v. Court, 34 Mont. 105; 85 Pac. 869.

Estate of Ross, 140 Cal. 289; 73 Pac. 976.

4756. (§ 1753.) *Share of after-born child, out of what part of estate to be paid.*—When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from the devisees or legatees in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case, such specific devise, legacy, or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Estate of Smith, 145 Cal. 121; 78 Pac. 369.

4757. (§ 1754.) *Advancement during lifetime of testator.*—If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

4758. (§ 1755.) *Death of devisee, being relation of testator, in lifetime of testator, leaving lineal descendants.*—When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

Estate of Ross, 140 Cal. 289; 73 Pac. 976.

4759. (§ 1756.) *Devise of land, how construed.*—Every devise of land in any will conveys all the estate of the deviser

therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

4760. (§ 1757.) *Will to pass rights acquired after the making thereof.*—Any estate, right, or interest in lands acquired by the testator after the making of his will, passess thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms devising, or in any other terms denoting the intent of the testator to devise all real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

4761. (§ 1758.) *Restriction to devise for charitable purposes.*—No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society, or corporation or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made, at least thirty days prior to such death, such devise or legacy, and each of them, shall be valid; *Provided*, That no such devises or bequests shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made, so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law.

Estate of McCauley, 138 Cal. 434; 71 Pac. 512.

4762. (§ 1759.) *Same.*—No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses except the same be done by letters duly executed at least thirty days before the decease of the testator, and if so made at least thirty days prior to such death, such devise or legacy and each of them shall be valid; *Provided*, That the prohibition contained in this section shall not apply to cases where not more than one-third of the estate of the testator shall be bequeathed or devised for charitable or benevolent purposes. [Act approved March 7, 1893.]

CHAPTER II.

INTERPRETATION OF WILLS.

- Section 4763. *Testator's intention to be carried out.*
- " 4764. *Intention to be ascertained fram will.*
- " 4765. *Rules of interpretation.*
- " 4766. *Several instruments are to be taken together.*

- Section 4767. Harmonizing various parts.*
 “ 4768. *In what case devise not affected.*
 “ 4769. *When ambiguous or doubtful.*
 “ 4770. *Words taken in ordinary sense.*
 “ 4771. *Words to receive an operative construction.*
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 “ 4773. *Effect of technical words.*
 “ 4774. *Technical words not necessary.*
 “ 4775. *Certain words not necessary to pass a fee.*
 “ 4776. *Power to devise, how executed by terms of will.*
 “ 4777. *Devise or bequest of all real or personal property, or both.*
 “ 4778. *Residuary clause.*
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 “ 4780. *“Heirs,” “relatives,” “descendants,” etc.*
 “ 4781. *Words of donation and limitation.*
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 “ 4788. *When cannot be divested.*
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 “ 4792. *Condition precedent, what.*
 “ 4793. *Effect of condition precedent.*
 “ 4794. *Conditions precedent, when deemed performed.*
 “ 4795. *Condition subsequent, what.*
 “ 4796. *Devisees, etc., take as tenants in common.*
 “ 4797. *Advancements, when adoptions.*

4763. (§ 1770.) *Testator’s intention to be carried out.*—A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

In re Klein’s Estate, 35 Mont. 204; 88 Pac. 802. Estate of Buhrmeister, 1 C. App. 82; 81 Pac. 752.

4764. (§ 1771.) *Intention to be ascertained from will.*—In cases of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator’s intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

In re Klein’s Estate, 35 Mont. 204; 88 Pac. 802. Estate of Buhrmeister, 1 C. App. 82; 81 Pac. 752.

4765. (§ 1772.) *Rules of interpretation.*—In interpreting a will, subject to the law of this state, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Estate of Sutro, 139 Cal. 89; 72 Pac. 827.

4766. (§ 1773.) *Several instruments are to be taken together.*—Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Estate of Murphy, 104 Cal. 568; 38 Pac. 543.

4767. (§ 1774.) *Harmonizing various parts.*—All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole but where several parts are absolutely irreconcilable, the latter must prevail.

Estate of Lux, 149 Cal. 206; 85 Pac. 147.

4768. (§ 1775.) *In what case devise not affected.*—A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

Estate of Granniss, 142 Cal. 7; 75 Pac. 324.

4769. (§ 1776.) *When ambiguous or doubtful.*—Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

4770. (§ 1777.) *Words taken in ordinary sense.*—The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

In re Klein's Estate, 35 Mont. 204; 88 Pac. 802.

Estate of Jeffreys, 1 C. App. 527; 82 Pac. 549.

4771. (§ 1778.) *Words to receive an operative construction.*—The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

Estate of Buhrmeister, 1 C. App. 82; 81 Pac. 752.

4772. (§ 1779.) *Intestacy to be avoided.*—Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Estate of Fay, 145 Cal. 86; 78 Pac. 340.

4773. (§ 1780.) *Effect of technical words.*—Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

4774. (§ 1781.) *Technical words not necessary.*—Technical words are not necessary to give effect to any species of disposition by a will.

In re Klein's Estate, 35 Mont. 204; 88 Pac. 802.

4775. (§ 1782.) *Certain words not necessary to pass a fee.*—The term “heirs,” or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

4776. (§ 1783.) *Power to devise, how executed by terms of will.*—Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of the testator.

Estate of Fair, 132 Cal. 558; 60 Pac. 442.

4777. (§ 1784.) *Devise or bequest of all real or personal property, or both.*—A devise or bequest of all the testator’s real or personal property, in express terms, or in any other terms, denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

4778. (§ 1785.) *Residuary clause.*—A devise of the residue of the testator’s real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

O’Connor v. Murphy; 147 Cal. 152; 81 Pac. 406.

4779. (§ 1786.) *Same.*—A bequest of the residue of the testator’s personal property (passes all the personal property)* which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

Estate of Granniss, 142 Cal. 7; 75 Pac. 324.

4780. (§ 1787.) *“Heirs,” “relatives,” “issue,” “descendants,” etc.*—A testamentary disposition to “heirs,” “relations,” “nearest relations,” “representatives,” “legal representatives,” or “personal representatives,” or “family,” “issue,” “descendants,” “nearest,” or “next of kin” of any person, without words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession in this code.

4781. (§ 1788.) *Words of donation and limitation.*—The terms mentioned in the last section are used as words of donation, and not of limitation, when the property is given to the person so designated directly, and not as a qualification of an estate given to the ancestor of such person.

4782. (§ 1789.) *To what time words refer.*—Words in a will referring to death or survivorship, simply, relate to the time of the testator’s death, unless possession is actually postponed, when they must be referred to the time of possession.

Estate of Alexander, 149 Cal. 150; 85 Pac. 308.

4783. (§ 1790.) *Devise or bequest to a class.*—A testamentary disposition to a class includes every person answering the

*Omitted in enrollment.

description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

Estate of Cavarly, 119 Cal. 410; 51 Pac. 629.

4784. (§ 1791.) *When conversion takes effect.*—When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property from the time of the testator's death.

Fatjo v. Swasey, 111 Cal. 638; 49 Pac. 225.

4785. (§ 1792.) *When child born after testator's death takes under will.*—A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

Estate of Fair, 132 Cal. 580; 60 Pac. 442.

4786. (§ 1793.) *Mistakes and omissions.*—When applying a will it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions cannot be received

In re Klein's Estate, 35 Mont. 204; Estate of Lynch, 142 Cal. 374; 75 Pac. 802. 88 Pac. 1086.

4787. (§ 1794.) *When devises and bequests vest.*—Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

Gelsthorpe v. Furnell, 20 Mont. 310; to his widow is not subject to the inheritance tax. 51 Pac. 270.
Hinds v. Wilcox, 22 Mont. 11; 55 Pac. Estate of Campbell 149 Cal. 717; 87 355. Real estate devised by a testator Pac. 573.

4788. (§ 1795.) *When cannot be divested.*—A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

4789. (§ 1796.) *Death of devisee or legatee.*—If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in § 4758 (1755).

Estate of Ross, 140 Cal. 290; 73 Pac. 976.

4790. (§ 1797.) *Interests in remainder are not affected.*—The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the estate.

4791. (§ 1798.) *Conditional devises and bequests.*—A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

4792. (§ 1799.) *Conditions precedent, what.*—A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect.

4793. (§ 1800.) *Effect of condition precedent.*—Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

4794. (§ 1801.) *Conditions precedent, when deemed performed.*—A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with.

In re Klein's Estate, 35 Mont. 204; 88 Pac. 802.

4795. (§ 1802.) *Conditions subsequent, what.*—A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

4796. (§ 1803.) *Devisees, etc., take as tenants in common.*—A devise or legacy given to more than one person vests in them as owners in common.

Estate of Hittell, 141 Cal. 434; 75 Pac. 53.

4797. (§ 1804.) *Advancements, when ademptions.*—Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

Section 4798. *Nature and designation of legacies. 1. Specific. 2. Demonstrative. 3. Annuities. 4. Residuary. 5. General.*

" 4799. *Order of sale in case of intestate.*

" 4800. *Order of sale in case of testator.*

" 4801. *Legacies, how charged with debt.*

" 4802. *Same.*

" 4803. *Abatement.*

" 4804. *Specific devises and legacies.*

" 4805. *Heirs' conveyance good, unless will is proved within four years.*

" 4806. *Possession of legatees.*

" 4807. *Bequest of interest.*

" 4808. *Satisfaction.*

" 4809. *Legacies, when due.*

" 4810. *Interest.*

" 4811. *Construction of these rules.*

- Section 4812. Executor according to the tenor.*
 “ 4813. *Power to appoint is invalid.*
 “ 4814. *Executor not to act till qualified.*
 “ 4815. *Execution and construction of prior wills not affected.*
 “ 4816. *The law of what place applies.*
 “ 4817. *Liability of beneficiaries for testator's obligations.*

4798. (§ 1820.) *Nature and designation of legacies. 1. Specific. 2. Demonstrative. 3. Annuities. 4. Residuary. 5. General.*—Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort can not be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies.

Estate of Smith, 145 Cal. 121; 78 Pac. 369.

4799. (§ 1821.) *Order of sale in case of an intestate.*—When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the Code of Civil Procedure.

In re Tuohy's Estate, 33 Mont. 246; 83 Pac. 490.

4800. (§ 1822.) *Order of sale in case of testator.*—The property of a testator, except as otherwise specially provided for in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably. Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for.

In re Tuohy's Estate, 33 Mont. 244; 83 Pac. 490. Specific devises, whether made for charitable purposes, or for valuable consideration, fall within the fifth class enumerated in this section,

and no distinction may be made, but all must be resorted to ratably for the payment of debts of the testator, after the property falling in the first four classes has been exhausted for that purpose.

4801. (§ 1823.) *Legacies, how charged with debt.*—The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed.

In re Tuohy's Estate, 33 Mont. 246; 83 Pac. 490.

Estate of Ratto, 149 Cal. 554; 86 Pac. 1107.

4802. (§ 1824.) *Same.*—Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.

4803. (§ 1825.) *Abatement.*—Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

4804. (§ 1826.) *Specific devises and legacies.*—In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the district court to sell the property devised and bequeathed, in the cases herein provided.

In re Tuohy's Estate, 33 Mont. 246; 83 Pac. 490.

4805. (§ 1827.) *Heirs' conveyance good, unless will is proved within four years.*—The rights of a purchaser or incumbrancer of real property, in good faith and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the clerk of the district court having jurisdiction thereof, or unless written notice of such devise is filed with the clerk of the county where the real property is situated, within four years after the deviser's death.

4806. (§ 1828.) *Possession of legatees.*—When specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

4807. (§ 1829.) *Bequest of interest.*—In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

Estate of Brown, 143 Cal. 454; 77 Pac. 160.

4808. (§ 1830.) *Satisfaction.*—A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

4809. (§ 1831.) *Legacies, when due.*—Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

In re Williams, 112 Cal. 524; 44 Pac. 808.

4810. (§ 1832.) *Interest.*—Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Estate of Brown, 143 Cal. 456; 77 Pac. 160.

4811. (§ 1833.) *Construction of these rules.*—The four preceding sections are in all cases to be controlled by a testator's express intention.

In re Williams, 112 Cal. 524; 44 Pac. 808.

4812. (§ 1834.) *Executor according to the tenor.*—Where it appears, by the term of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been made executor.

Estate of Ringot, 124 Cal. 47; 56 Pac. 781.

4813. (§ 1835.) *Power to appoint is invalid.*—An authority to an executor to appoint an executor is void.

4814. (§ 1836.) *Executor not to act till qualified.*—No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

4815. (§ 1837.) *Execution and construction of prior wills not affected.*—The provisions of this title do not impair the validity of the execution of any will made before it takes effect, or affect the construction of any such will.

4816. (§ 1838.) *The law of what place applies.*—Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this state, by the law of this state; when relating to personal property, by the law of the testator's domicile.

State v. Court, 34 Mont. 105; 85 Pac. 869.

4817. (§ 1839.) *Liability of beneficiaries for testator's obligations.*—Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VII.

SUCCESSION.

- Section 4818. *Succession defined.*
 “ 4819. *Who first succeeds to possession of estates not devised.*
 “ 4820. *Succession to and distribution of property.*
 “ 4821. *Illegitimate children to inherit in certain events.*
 “ 4822. *The mother is a successor to illegitimate child.*
 “ 4823-4827. *Degrees of kindred, how computed.*
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 “ 4830. *Advancements, when too much, or not enough.*
 “ 4831. *What are advancements.*
 “ 4832. *Value of advancements, how determined.*
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 “ 4834. *Inheritance by representation.*
 “ 4835. *Aliens may inherit, when and how.*
 “ 4836. *Succession not claimed, attorney general to cause to be sold, and proceeds deposited.*
 “ 4837. *When the property and estate escheat to the state.*
 “ 4838. *Property escheated subject to charges as other property.*
 “ 4839. *Successor liable for decedent's obligations.*

4818. (§ 1850.) *Succession defined.*—Succession is the coming in of another to take the property of one who dies without disposing of it by will.

In re Tuohy's Estate, 33 Mont. 246; Estate of Miner, 143 Pac. 198; 76 Pac. 83 Pac. 490. 968.

4819. (§ 1851.) *Who first succeeds to possession of estates not devised.*—The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by that court for the purposes of administration.

Hinds v. Wilcox, 22 Mont. 11; 55 Pac. Trippet v. State, 149 Cal. 529; 86 Pac. 1084. 358.

4820. (§ 1852.) *Succession to and distribution of property.*—When any person having title to any estate not limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

1. If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the

decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leave issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living, and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. If the decedent leave no issue, the estate goes one-half to the surviving husband or wife, and the other to the decedent's father and mother in equal shares, and if either be dead the whole of said half goes to the other. If there be no father or mother, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation. If the decedent leave no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either be dead then to the other.

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation.

4. If the decedent leave a surviving husband or wife, and neither issue, father, mother, brother, nor sister, the whole estate goes to the surviving husband or wife.

5. If the decedent leave neither issue, husband, wife, father, mother, brother, nor sister, the estate goes to the next of kin, in equal degree, excepting that where there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote.

6. If the decedent leave several children, or one child, and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also

dead, and any of them have left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

8. If the decedent leave no husband, wife, or kindred, the estate escheats to the state.

State v. Court, 25 Mont. 365; subd. 8; 65 Pac. 122. Where a testator died without heirs, the state is entitled to contest a proposed will.

Dahlman v. Dahlman, 28 Mont. 377; 72 Pac. 749. The right of a wife to dower or election under sections 228 and 236 *supra* are separate from her rights

as an heir of her husband under this section.

In re Dahlman's Estate, 28 Mont. 379; 72 Pac. 750. A court exercising its probate jurisdiction has no power with reference to dower.

State v. Miller, 149 Cal. 212; 75 Pac. 609.

4821. (§ 1853.) *Illegitimate children to inherit in certain events.*—Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless before his death, his parents shall have inter-married, and his father, after such marriage, acknowledges him as his child, or adopts him into his family, in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

Estate of DeLaveaga, 142 Cal. 159; 75 Pac. 790.

4822. (§ 1854.) *The mother is a successor to illegitimate child.*—If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or, in case of her decease, to her heirs at law.

4823. (§ 1855.) *Degrees of kindred, how computed.*—The degree of kindred established by the number of generations, and each generation is called a degree.

4824. (§ 1856.) *Same.*—The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

4825. (§ 1857.) *Same.*—The direct line is divided into a direct line descending and a direct line ascending. The first is that

which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

4826. (§ 1858.) *Same*.—In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

4827. (§ 1859.) *Same*.—In the collateral line, the degrees are counted by generations from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Robinson v. Southern Co., 105 Cal. 557; 38 Pac. 94.

4828. (§ 1860.) *Relatives of half blood*.—Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise, or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Estate of Lynch, 132 Cal. 216; 64 Pac. 284.

4829. (§ 1861.) *Advancements, constitute part of distributive share*.—Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child, or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

4830. (§ 1862.) *Advancements, when too much, or not enough*.—If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

4831. (§ 1863.) *What are advancements*.—All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

4832. (§ 1864.) *Value of advancements, how determined*.—If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the ac-

knowledge of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

4833. (§ 1865.) *When heir, advanced to, dies before decedent.*—If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in the like manner as if the advancement had been made directly to them.

4834. (§ 1866.) *Inheritance by representation.*—Inheritance or succession “by right of representation” takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

4835. (§ 1867.) *Aliens may inherit, when and how.*—Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this title is precluded from such succession by reason of the alienage of any relative; but no non-resident foreigner can take by succession, unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

State v. Court, 25 Mont. 364; 65 Pac. 121. Where a testator had no resident heirs, the state was entitled to file objections to the probate of the will before the expiration of five years from the death of the testator.

In re Watson's Estate, 31 Mont. 440; 78 Pac. 703. The court properly granted letters of administration to a resident of

the state, whose appointment had been asked by non-resident brothers and sisters of decedent, and denied the request of a public administrator for such letters.

In re Pomeroy, 33 Mont. 73; 81 Pac. 30. Sections 1867, 1868 and 1869 of this Code do not apply to cases in which citizens of the United States are claimants.

4836. (§ 1868.) *Succession not claimed, attorney general to cause to be sold, and proceeds deposited.*—When succession is not claimed as provided in the preceding section, the district court, on information, must direct the attorney general to reduce the property to his or the possession of the state, or to cause the same to be sold, and the same or the proceeds thereof to be deposited in the state treasury for the benefit of such non-resident alien, or his legal representative, to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the state auditor and treasurer is produced that he is entitled to succeed thereto.

State v. Court 25 Mont. 364; 65 Pac. 121.

In re Pomeroy, 33 Mont. 73; 81 Pac. 630.

Estate of Pendergast, 143 Cal. 140; 76 Pac. 962.

4837. (§ 1869.) *When the property and estate escheat to the state.*—When so claimed, the evidence and the joint order of the auditor and treasurer must be filed by the treasurer as his voucher, and the property delivered or the proceeds paid to the claimant

on filing his receipt therefor. If no one succeeds to the estate or the proceeds, as herein provided, the property of the decedent devolves and escheats to the state, and is placed by the state treasurer to the credit of the general fund.

State v. Court, 25 Mont. 364; 65 Pac. 121. In re Pomeroy, 33 Mont. 73; 81 Pac. 630.

4838. (§ 1870.) *Property escheated subject to charges as other property.*—Real property passing to the state under the last section, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession, and is also subject to all the provisions of the Code of Civil Procedure, in relation to escheated estates.

4839. (§ 1871.) *Successor liable for decedent's obligations.*—Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

TITLE VIII.

WATER RIGHTS.

- Section 4840. *What waters may be appropriated.*
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- “ 4891. *United States may take ditches by right of eminent domain.*

4840. *What waters may be appropriated.*—The right to the use of any unappropriated water of any natural stream, water course, spring, dry coulee, or other natural source of supply, and of any running water flowing in the streams, rivers, canyons and ravines of this State, may hereafter be acquired by appropriation. [*Act approved March 16th, 1901.*] (7th Sess. Chap. 152-3.)

Power v. Switzer, 21 Mont. 529; 55 Pac. 35.

Helena v. Rogan, 26 Mont. 477; 68 Pac. 803.

Quinlan v. Calvert, 31 Mont. 119; 77 Pac. 429. The mere fact that water has its source on land owned by a plaintiff does not of itself give him the exclusive right therein so as to prevent others from acquiring rights to it under the laws of the state.

Chessman v. Hale, 31 Mont. 583; 79 Pac. 255.

Norman v. Corbley, 32 Mont. 202; 79 Pac. 1060. The title to the *corpus* of such waters cannot be acquired so that a prior appropriator, who has all the water he needs, cannot question the right of another to use the remainder of the water, or maintain an action against him on account of such use. The latter cannot, so long as the former has all the water he needs, acquire a prescriptive right to use any given quantity of the water to the detriment of the appropriation by the former.

4841. (§ 1881.) *Appropriations must be for a useful purpose.*—The appropriation must be for some useful or beneficial pur-

pose, and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact, and shall be determined as other questions of fact.

Power v. Switzer, 21 Mont. 529; 55 Pac. 35. The diversion of water for domestic purposes in excess of what is required, and allowing such excess to overflow lands without any intention of irrigating or using such excess for any useful purpose, does not constitute an appropriation of such excess.

Toohey v. Campbell, 24 Mont. 18; 60 Pac. 397. A claimant's intent at the time of the appropriation of water must be determined by his acts and surrounding circumstances and its actual and contemplated use. The right to the use of water may be owned without regard to

the title to lands on which the water is to be used.

Miles v. Butte E. Co. 32 Mont. 67; 79 Pac. 54. Until a claimant can use the water of a stream, the right thereto does not exist in such sense that the mere diversion of the water by another is a cause of action to recover the water, or damages for its diversion.

Sayre v. Johnson, 33 Mont. 19; 81 Pac. 390. Water used to increase the amount of grass for pasture by irrigation is useful and beneficial within this section. An appropriator may use the water on school land leased from the state.

4842. (§ 1882.) *Point of diversion may be changed.*—The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

Smith v. Denniff 24 Mont. 20; 60 Pac. 398.
Helena v. Rogan, 26 Mont. 475; 68 Pac. 802.

Hays v. Buzard, 31 Mont. 81; 77 Pac. 425.

4843. (§ 1883.) *Water may be turned into natural channels.*—The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed; but, in reclaiming it, water already appropriated by another must not be diminished in quantity, or deteriorated in quality.

4844. *Return of surplus water to stream.*—In all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream, and there shall, at any time, be a surplus of water so diverted, over and above what is actually, and necessarily used by the prior appropriator, such person shall be required to turn, and cause to flow back into the stream, such surplus water, and, upon failure so to do within twenty-four hours after demand being made upon him in writing, to him in person or at his place of abode, by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved for the damage resulting therefrom, in such sum as may be determined by court. [*Act approved March 1, 1907.*] (10th Sess. Chap. 56.)

4845. (§ 1885.) *First in time, first in right.*—As between appropriators the one first in time is first in right.

4846. *Appropriation by United States.*—That the Government of the United States may by and through the Secretary of the Interior, or any person by him duly authorized to act in that behalf, appropriate the water of streams or lakes within the State of Montana in the same manner and subject to the general conditions applicable to the appropriation of the waters of the state by private individuals; *provided*, such appropriation shall be held valid for the period of three years after the filing of the notice of appropriation thereof in the office of the County Clerk and Recorder of the appropriate county, but such appropriation shall be null and void after the period of three years unless prior to the expiration of such period the work of constructing the canal or ditch by which the same is to be diverted shall have been commenced; *and be it further provided*, that if at any time prior to the expiration of the aforesaid period of three years the Secretary of the Interior, or a person by him duly authorized to act in the premises, files a notice with the County Clerk and Recorder in the county in which the original appropriation notice was filed, announcing an abandonment by the Government of the United States of the irrigation project for which the water was appropriated, then and in that event the appropriation shall become null and void. [*Act approved February 27, 1905.*] (9th Sess. Chap. 44.)

4847. (§ 1886.) *Notice of appropriation.*—Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

1. The number of inches claimed, measured as hereinafter provided.
2. The purpose for which it is claimed and place of intended use.
3. The means of diversion, with size of flume, ditch, pipe, or aqueduct, by which he intends to divert it.
4. The date of appropriation.
5. The name of the appropriator.

Within twenty days after the date of appropriation the appropriator shall file with the county clerk of the county in which such appropriation is made a notice of appropriation, which in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream, with reference to some natural object or permanent monument. The notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

Murray v. Tingley, 20 Mont. 20; 50 Pac. 723. A notice of location of a water right is fatally defective unless it is verified in conformity with this section. A valid water right may be acquired, where there has been no compliance with

the statute and the water is actually diverted and applied to a beneficial use. The right of one who complies with the law regulating the appropriation of water, relates back to the date of the posting of his notice of location.

4848. (§ 1887.) *Diligence in appropriating.*—Within forty days after posting such notice the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when constructed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this title.

Murray v. Tingley, 20 Mont. 266; 50 Pac. 724.

4849. (§ 1888.) *Effect of failure.*—A failure to comply with the provisions of this title deprives the appropriator of the right to the use of water as against a subsequent claimant who complies therewith, but by complying with the provisions of this title, the right to the use of the water shall relate back to the date of posting the notice.

Murray v. Tingley, 20 Mont. 265; 50 Pac. 724.

Wells v. Mantes, 99 Cal. 586; 34 Pac. 324.

4850. (§ 1889.) *Record of declaration.*—Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this title, file in the office of the county clerk of the county in which the water right is situated, a declaration in writing, except notice be already given of record as required by this title, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in § 4847 (1886), of this title, and verified as required in said last mentioned section, in cases of notice of appropriation of water; *Provided*, That a failure to comply with the requirements of this section shall in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts.

4851. (§ 1890.) *Record prima facie evidence.*—The record provided for in §§ 4847 (1886) and 4850 (1889), of this title, when duly made, shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

4852. (§ 1891.) *Rights settled in one action.*—In any action hereafter commenced for the protection of rights acquired to water under the laws of this state, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one judgment settle the relative priorities and rights of all the parties to such action. When damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdicts, and judgment thereon may be entered

for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves. In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same kind is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

Beach v. Spokane Co., 25 Mont. 382; 65 Pac. 112. Parties having the right to divert water of a creek for irrigation purposes may join in a suit to restrain a third person from diminishing the volume of the water to which they are entitled.

McNinch v. Crawford 30 Mont. 297; 76 Pac. 698. In an action to settle the relative priorities and rights of the parties to the use of the waters of a stream, every party to the suit is an antagonist of every other party.

4853. (§ 1892.) *Record of declaration notices.*—The county clerk must keep a well bound book, in which he must record the notices and declarations provided for in this title, and he shall be entitled to have and receive the same fees as are now or hereafter may be allowed by law for recording instruments entitled to be recorded.

4854. *Measurement of water. Cubic foot.*—Hereafter a cubic foot of water (7.48 gallons) per second of time shall be the legal standard for the measurement of water in this State. [Act approved March 3rd, 1899, § 1.] (6th Sess. 126.)

4855. *Miners inch equivalent in gallons.*—Where water rights expressed in miners' inches have been granted, one hundred miners' inches shall be considered equivalent to a flow of two and one-half cubic feet (18.7 gallons) per second; two hundred miners' inches shall be considered equivalent to a flow of five cubic feet (37.4 gallons) per second, and this proportion shall be observed in determining the equivalent flow represented by any number of miners' inches. [Act approved March 3rd, 1899, § 2.] (6th Sess. 126.)

4856. *Not to affect existing decrees.*—Provided, that the provisions of this bill shall not affect or change the measurement of water heretofore decreed by a Court, but such decreed water shall be measured according to the law in force at the time such decree was made and entered. [Act approved March 3rd, 1899, § 3.] (6th Sess. 126.)

4857. (§ 1894.) *Right to construct dams and raise water.*—The right to conduct water from or over the land of another for any beneficial use, includes the right to raise any water by means of dams, reservoirs or embankments to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor, may be acquired upon payment of just compensation in the manner provided by law for the taking of private property for public use; *Provided further*, that if it is necessary to conduct the water across the right of way of any railroad, it shall be the duty of the owners of the ditch or flume to give thirty days' notice in writing to the owner or owners of such

railway of their intention to construct a ditch or flume across the right of way of such railroad and the point at which the said ditch or flume will cross the railroad; also the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad or their agent fails to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said flume or ditch to construct the same across the right of way of such railroad, without further notice to said owner or owners of the railroad. [*Act approved March 18, 1895.*]

4858. (§ 1895.) *Highways to be protected.*—Any person who digs and constructs ditches, dykes, flumes or canals, over or across any public roads or highways, or who uses the waters of such ditches, dykes, flumes or canals, is required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes or canals may flow over, or in anywise injure any roads or highways, either by bridging or otherwise.

4859. (§ 1896.) *Penalty for violating preceding section.*—Any person offending against the preceding section, on conviction thereof, shall pay for every offense a fine of not less than twenty-five dollars, nor more than one hundred dollars, with costs of prosecution. One-half of the fine shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed and the other half shall be paid to the person informing the nearest magistrate that such offense has been committed, who shall issue a warrant upon proper complaint being made.

4860. (§ 1897.) *Owners of water to sell surplus.*—Any person having the right to use, sell or dispose of water, and engage in using, selling or disposing of the same, who has a surplus of water not used, or sold, or any person having a surplus of water, and the right to sell and dispose of the same, is required, upon the payment or tender to the person entitled thereto an amount equal to the usual and customary rates per inch, to convey and deliver to the person such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water exists and said payment or tender be made as aforesaid.

Helena Co. v. Lynch, 25 Mont. 503; 65 Pac. 921.

4861. (§ 1898.) *Duty of purchaser to dig ditches.*—Any person desiring to avail himself of the provisions of the preceding section must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him, and pay or tender to the person having the right to the use, sale or disposal thereof, an amount equal to

the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume or aqueduct, and putting in gates, gauges or other proper and necessary appliances usual and customary in such cases, and until the same shall be done, the delivery of the said surplus water shall not be required as provided in the preceding section.

Helena Co. v. Lynch, 25 Mont. 503; 65 Pac. 921.

4862. (§ 1899.) *Enforcement of right to surplus.*—Any person constructing the necessary ditches, aqueducts or flumes, and making the payments or tenders hereinbefore provided, is entitled to the use of so much of the said surplus water as said ditches, flumes or aqueducts have the capacity to carry, and for which payment or tender is made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Helena Co. v. Lynch, 25 Mont. 503; 65 Pac. 921.

4863. (§ 1900.) *Purchaser cannot sell.*—Nothing in the three preceding sections shall be so construed as to give the person acquiring the right to the use of water as therein provided, the right to sell or dispose of the same after being so used by him, or prevent the original owner or proprietor from retaking, selling and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

4864. (§ 1901.) *Dam or reservoir to be securely constructed.*—No person shall hereafter fill, or procure to be filled, with water, any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the water to be turned therein.

4865. (§ 1902.) *No person to use insecure reservoir.*—No person shall hereafter construct, or cause to be constructed, on a stream, any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

4866. *Surveys of ditches. Filing map.*—Any person availing himself of the provisions of the preceding Sections, and who shall have complied with said preceding Sections relating to the appropriation of water, may, within six months after his ditch is completed, publish a notice once a week for two successive weeks, in a newspaper designated by the County Commissioners as the official paper of the County, stating that he will, on a date to be therein mentioned, which date shall be not less than twenty nor more than thirty days after the first publication of said notice, cause said ditch to be surveyed by a competent Civil Engineer, whose name shall be given, and stating the name of stream, and such a general description as will identify the ditch. It shall be the duty of said person to employ a competent civil engineer to make such survey, and it shall be the duty of such civil engineer

to survey said ditch, ascertain its grade, measure the headgate thereof, and measure said ditch in such other places as may be necessary to show its carrying capacity, and also measure the land irrigated by said ditch, or proposed to be irrigated thereby, and to make a map showing the general courses of the ditch and the land irrigated or proposed to be irrigated therefrom, giving the grade and dimensions of the headgate and other dimensions of the ditch where measured, and attach thereto his affidavit showing the date when he commenced the survey of said ditch, the date when completed, the names of the persons who assisted him, and that said map and the date given thereon are correct. If for any reason the survey cannot be made upon the day designated in the notice, it may be made on any subsequent day, and the person who caused said survey to be made shall file an affidavit showing why the survey was not made on the day mentioned in the notice; *Provided, however*, that if any person appears upon the ground at the time mentioned in the notice, and serves a written notice that he desires to be present when said survey is made, the person who caused said ditch to be made shall give such person at least three days written notice of the time when said ditch shall be surveyed. The said survey of said ditch may be continued from day to day, or from time to time, as may be necessary to complete it, and any person shall have the right to be present at said survey. The map made by the surveyor, his affidavit, and the affidavit of publication of the notice aforesaid, shall, within thirty days from the completion of said survey, be filed in the office of the Clerk and Recorder of the county wherein the notice of appropriation is filed, and such affidavit and map, or certified copies thereof, shall be prima facie evidence of the facts therein shown and stated in all courts in this State in actions relating to said ditch and water right. [*Act approved March 4, 1905, § 1.*] (9th Sess. Chap. 95.)

4867. *Effect of decree upon subsequent appropriations.*—Whenever there shall have been an adjudication of the rights between appropriators or claimants, any stream or any other water supply in this State, in any District Court of the State, or the United States Court, in an action prosecuted in good faith between such appropriators, or claimants, to determine their respective rights to the use of such waters, and which decree is based upon evidence introduced, and not upon stipulations or admissions of the parties, such adjudication and decree, or certified copies thereof, shall, as against all persons, appropriating or diverting any of the waters of the said stream, or other water supply, after the date of such decree, in an action relating to such waters, be prima facie evidence of the facts therein found, determined and decreed, respecting the rights of parties to said action to the use of the waters of said stream, or other water supply. [*Act approved March 4, 1905.*] (9th Sess. Chap. 95.)

4868. *Appropriations of water subject to prior decrees adjudicating rights.*—All water hereafter appropriated by any person, association, company, or corporation after the passage of this Act, from any stream, creek, spring, canyon, river or ravine in this State, in which the water rights therein have been adjudicated and decreed prior to the passage of this Act, and a decree of a Court of Competent Jurisdiction entered therein, shall be subject to such decree. [*Act approved March 9, 1907, § 1.*] (10th Sess. Chap. 185.)

4869. *Non-adjudicated streams not affected by this act.*—In all streams, creeks, springs, canyons, rivers and ravines, in which the water rights therein have not been adjudicated by a court of competent jurisdiction, water shall be appropriated in the same manner as provided by law, at the time of the passage of this Act. [*Act approved March 9, 1907, § 2.*] (10th Sess. Chap. 185.)

4870. *Appropriations pending litigation subject to decree.*—At such time as there may be legal proceedings instituted by the owner or owners of any water right or water rights in any stream, spring, creek, canyon, river or ravine, before any court of competent jurisdiction, all subsequent appropriations made in any such streams, creeks, springs, canyons, rivers or ravines will be subject to such suit as may be instituted and shall not date prior to the date of the beginning of said suit, and will be subject to the rulings and decisions thereunder. [*Act approved March 9, 1907, § 3.*] (10th Sess. Chap. 185.)

4871. *Appropriation from adjudicated streams, notice.*—Any person desiring to appropriate water in any stream, creek, canyon, river or ravine, wherein the rights of water therein have been adjudicated and decreed, shall post a notice in writing in a conspicuous place at the point of the intended diversion, stating therein:

1. The flow claimed, expressed in cubic feet per second.
2. The purpose for which said water is claimed, and the place of intended use.
3. The name of the stream, creek, spring, canyon, river or ravine.
4. The name of the appropriator or appropriators.
5. The date of posting said notice.

The work in the construction and completion of the means of diverting and conveying water to place of use, shall be prosecuted with reasonable diligence, otherwise no rights shall be acquired by such appropriator, and no appropriator shall acquire any rights to water in excess of the carrying capacity of the ditch or means of conveying water, nor in excess of the amount actually needed by the appropriator for some useful and beneficial purpose. [*Act approved March 9, 1907, § 4.*] (10th Sess. Chap. 185.)

4872. *Application must be filed with the clerk of the district court.*—Within forty days from the date of the completion of the works of irrigation, the appropriator shall file with the Clerk of the District Court in the County in which said water is to be appropriated, an application in writing to have such ditch measured and the capacity determined, as herein provided. Such application shall contain the sworn statement of the appropriator, in which is given the name of the stream from which said water is to be appropriated, the amount of water to be diverted, the intended point of diversion, the intended use of such water and the place of intended use, and the name of the appropriator. The Clerk of the District Court upon receipt of such application, duly executed and presented by the applicant or his attorney shall enter the same upon the Court records of said County, and thereupon issue an order directing a competent civil engineer to proceed to measure and determine the capacity of said ditch (expressed in flow of cubic feet per second) definitely locate the exact point of the diversion by a course and distance to some established corner of the public surveys, or if there be no such corner within two miles of said ditch, then a connecting line shall be run to some suitable permanent object or monument that will not be destroyed or defaced, and to report the results of such measurements and surveys, together with a plat, in duplicate, on which shall be shown the location of said point of diversion, together with the connecting line, to the corner of the public surveys or monuments, the size and capacity of the ditch and headgate, the date of the notice of appropriation, the date of the survey, the name of the stream, the name of the appropriator or appropriators, the purpose and place of intended use, and in case the use be for irrigation, the plat must show the location and area of land to be irrigated thereby, and make such returns to the Clerk of the Court within thirty (30) days from the receipt of said order. The Clerk shall thereupon cause to be published, in the newspaper published nearest the point of diversion once a week in three successive issues of said paper, a notice giving the name of the appropriator, amount of appropriation, and name of stream from which the water is appropriated. Any person or persons interested in the waters of said stream may on or before the last day of publication, file with the Clerk, written objections to such appropriation. [Act approved March 9, 1907, § 5.] (10th Sess. Chap. 185.)

4873. *Duties of the court.*—The Clerk of the District Court, immediately after the expiration of the period of publication, the receipt of the report and plat of the surveyor, and proof of publication of notice, shall file the same, and on the first day of a regular or special term of court thereafter, shall present all papers to the court for consideration. If no objections are filed, the court

shall enter an order allowing said appropriation. If objections are made, the court shall fix a day for hearing, and on such hearing witnesses may testify, and the court after hearing may make any order deemed proper in the premises. [*Act approved March 9, 1907, § 6.*] (*10th Sess. Chap. 185.*)

4874. *Deposit for expenses.*—The appropriator shall, at the time of filing his application with the Clerk of the District Court, make a deposit with said Clerk, in a sum sufficient to cover all expense for the legal fees for filing any action, together with stenographer's fees, and fees for filing and recording all decrees and other papers in the matter, and the cost of the survey, not to exceed ten dollars per day, and necessary traveling expenses, and five dollars for each plat filed, said sum to be fixed and estimate made by the Clerk of the District Court, and residue remaining in the possession of said Clerk, when all fees and costs are paid shall be returned to the applicant; should there not be sufficient money deposited to meet all fees and expenses, said water right shall be of no force and effect, until the same have been paid. [*Act approved March 9, 1907, § 7.*] (*10th Sess. Chap. 185.*)

4875. *Payment of expenses.*—The Clerk of the District Court, shall upon receipt of any report made in conformity with the provisions of this Act, and duly certified to by a civil engineer, pay to him out of the moneys deposited with him for said purpose, a sum not to exceed ten dollars per day and necessary traveling expenses, and five dollars for each plat made and filed, upon the civil engineer presenting the proper bill, duly sworn to, for said expenses. A receipt of any such payment shall be given to the Clerk. [*Act approved March 9, 1907, § 8.*] (*10th Sess. Chap. 185.*)

4876. *Record of survey.*—The Clerk of the District Court shall keep in his office a suitable bound book, in which shall be kept an accurate record of all surveys and reports made in accordance with this Act. [*Act approved March 9, 1907, § 9.*] (*10th Sess. Chap. 185.*)

4877. *Statutory measurements.*—Where water rights have been decreed in statutory or miners inch measurement, the measurement shall be in cubic feet per second, and one hundred miners or statutory inches shall be equivalent to a flow of two and one half cubic feet per second, and this proportion shall be observed in determining the equivalent flow of any number of miners or statutory inches. [*Act approved March 9, 1907, § 10.*] (*10th Sess. Chap. 185.*)

4878. *Penalty.*—A failure to comply with the provisions of this Act deprives the appropriator of the right to such decree, as against a subsequent claimant who complies herewith. [*Act approved March 9, 1907, § 11.*] (*10th Sess. Chap. 185.*)

4879. *Effect of decree.*—Any person or persons appropriating water under the provisions of this Act, shall be subject to, bound by, and shall comply with any decree of court adjudicating the waters of such stream, or any stream of which the same may be a tributary or feeder, as fully and to the same extent as if said person or persons were original parties to the action wherein the said decree is made and entered, and any water commissioner or commissioners, appointed by the Court to distribute waters under any decree shall have jurisdiction over, and shall distribute any waters appropriated under the provisions of this Act, according to priority. [Act approved March 9, 1907, § 12.] (10th Sess. Chap. 185.)

4880. *Effect of failure to comply as against subsequent appropriators.*—A failure to comply with the provisions of this Act, deprives the appropriator of the right to use any water of such stream, as against any subsequent appropriator complying herewith, and as against any prior appropriator mentioned in or bound by a decree of court. [Act approved March 9, 1907, § 13.] (10th Sess. Chap. 185.)

4881. *Appointment of water commissioner.*—Whenever the water rights pertaining to any stream or water system within the State of Montana have been determined by a decree of a competent Court it shall be the duty of the district judge of the district within which such water rights are situated, upon the application of the owners of at least twenty-five per cent of the water rights affected by such decree, to appoint a commissioner, who shall have the authority to measure and distribute to the parties interested under such decree the waters to which they are entitled, according to their priority as established by such decree; and for that purpose such commissioner shall have authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by such decree, and to visit, inspect and adjust all headgates or other means of distributing such waters; and shall have the same power as a sheriff or constable to arrest any and all persons interfering with the distribution made by him, and to take such persons so arrested before the Judge of the District Court for trial for contempt of the decree of said Court. [Act approved March 2nd, 1899, § 1.] (6th Sess. 136-137.)

4882. *Compensation of commissioner.*—The parties using the water shall be liable for the payment of the fees and compensation of such Commissioner, and the Judge of the District Court is authorized and directed to fix the compensation of such Commissioner, and to apportion the amount of such compensation proportionately among the water users named in said decree, and which said order shall have the force and effect of a judgment, and may be enforced by an execution. [Act approved March 2nd, 1899, § 2.] (6th Sess. 137.)

4883. *Failure of commissioner to perform duty.*—If said Commissioner shall fail to perform the duties imposed upon him by the order of Court, he shall be deemed guilty of contempt of the order of said Court. [Act approved March 2nd, 1899, § 3.] (6th Sess. 137.)

4884. *Appointment of water commissioner.*—Whenever the water rights pertaining to any stream or water system within the State of Montana have been determined by a decree of a competent court it shall be the duty of the District Judge of the District within which such water rights are situated, upon the application of the owners of at least twenty five per cent. of the water rights affected by such decree, to appoint a Commissioner, who shall have the authority to measure and distribute to the parties interested under such decree the waters to which they are entitled, according to their priority as established by such decree; *provided, however*, that upon the application of the owners of at least fifty-one per cent. of the water rights in any ditch or single water system affected by such decree, a Commissioner shall be appointed who shall have authority to measure and distribute to the parties interested under such decree, the waters to which they are entitled, as heretofore provided, and in addition shall have the authority to keep in reasonable repair and maintain such water ditch or water system at the expense of the owners thereof, and for each of the purposes above set forth such Commissioner or Commissioners shall have authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by such decree, and to visit, inspect and adjust all head gates, or other means of distribution of such waters, and shall have the same power as a sheriff or constable to arrest any or all persons interfering with the distribution made by him, and to take such person so arrested before the Judge of the District Court for trial for contempt of the decree of said Court. [Act approved March 2, 1905, § 1.] (9th Sess Chap. 64.)

State v. Court, 33 Mont. 117; 82 Pac. 451. This act does not constitute a commissioner specified therein a judicial officer in the sense that a violation of his orders is a contempt committed in the presence of the court.

State v. Court, 34 Mont. 267; 86 Pac.

801. A person not mentioned in the decree, who signs a petition for the appointment of the water commissioner and afterwards refused to respect the decree, makes himself a party thereto and is liable to be punished in contempt proceedings.

4885. *Term of office.*—Such Water Commissioner, so appointed, shall hold his office for such time during the irrigating season of each year as may be designated by the Judge, in the order making such appointment, *provided*, that said Judge may in his discretion, at any time, change the time for the closing of such service of such commissioner. [Act approved March 2, 1905, § 2.] (9th Sess. Chap. 64.)

4886. *Oath of office.*—The Water Commissioner, so appointed by the Court, shall take and subscribe and file with the Clerk of

the District Court, an oath of office, before commencing the discharge of his duties as such commissioner. [*Act approved March 2, 1905, § 3.*] (9th Sess. Chap. 64.)

4887. *Objections to commissioner's award.*—Any person owning any of the waters of such stream, who is dissatisfied with the method of distribution of the waters of such stream by such Water Commissioner, and who claims to be entitled to more water than he is receiving, or is entitled to a prior right than that allowed him by such Commissioner, may file his written complaint, duly verified, setting forth the facts of such claim. Thereupon the Judge shall fix a time for the hearing of such petition and shall direct that notice be given to the parties interested in such hearing, the Judge may deem necessary. At the time fixed for such hearing, the Judge of said District Court must hear and examine the complainant and such other parties as may appear to support or resist such claim, and also examine such Water Commissioner and witnesses as to the charges contained in said complaint. Upon the determination of such hearing, the Judge shall make such findings and order as said Judge may deem just and proper in the premises. If it shall appear to such Judge that the Water Commissioner has not properly distributed the water according to the provisions of such decree, then the Judge shall give the proper instructions for such distribution. The Judge may remove such Water Commissioner and appoint some other person in his stead, if he deems that the interests of the parties in the waters mentioned in such decree will be best subserved thereby, and if it shall appear to such Judge that the said Water Commissioner has wilfully failed to perform his duties, he may adjudge on said hearing said Water Commissioner guilty of a contempt of the Court and punish him as for a contempt. The Judge shall make such order as to the payment of costs of such hearing as may appear to him to be just and proper. [*Act approved March 2, 1905, § 4.*] (9th Sess. Chap. 64.)

4888. *Record of commissioner. Expenditure.*—Such Water Commissioner must keep a daily record of the amount of water distributed to each water user and must file a summary of such record with the Clerk of the Court at the close of his term of service, showing in detail, the total amount of water distributed to each water user during such season. Thereupon the Judge shall make an order apportioning the total amount of the fees and compensation allowed to such Commissioner, and charge the same proportionately to the persons using water during each season, according to the number of inches of water used by such persons; and said Water Commissioner shall also file a statement of the amount necessarily incurred and expended by him in the repair of any water ditches, and making of any head gates or dams necessary for the distribution of such waters, and which said expense

shall be assessed against and paid by the party or parties for whom such services in the repair of such ditch or ditches, and the making of any dams or head gates were necessary. And the Judge shall in the order fixing the amount to be paid by each water user also fix the amount to be paid for the services and expenses last herein mentioned. Upon the filing of such report by the Water Commissioner, the Clerk of the Court, as above provided for, shall notify each person mentioned in such report, by mail, that objections to such report may be made by any persons objecting thereto within thirty days after the filing of such report, and unless such objections are filed, the report will be approved by the Judge of the Court. At any time during said thirty days, any person objecting to such report may make a motion to retax such costs, and the Judge may hear and determine such motion and make such orders in reference thereto, as in the re-taxation of costs in other cases. [*Act approved March 2, 1905, § 5.*] (*9th Sess. Chap. 64.*)

4889. *Fees and compensation.*—At the time of the appointment of such Water Commissioner, his fees and compensation must be fixed by an order of the Judge of such Court, and the Judge may also allow as a charge, any expenses necessarily incurred by said Water Commissioner in the discharge of his duties, in the employment of extra labor for the repair of dams, head gates, ditches or flumes, when immediate action is necessary to preserve the rights of the parties entitled to the waters of such stream, or when the Judge has, in his order appointing such Commissioner, required such Commissioner to repair ditches and keep in repair the necessary head gates, ditches or flumes. The costs thereof, however, shall be taxed against the party or parties for whose benefit the same were incurred. [*Act approved March 2, 1905, § 6.*] (*9th Sess. Chap. 64.*)

4890. *Users must maintain headgates.*—All persons using water under a decree from any stream whereon a Water Commissioner is appointed, shall be required to have suitable head gates at the point wherein a ditch taps a stream, and shall also, at some suitable place on the ditch and as near the head thereof as practicable, place and maintain a proper measuring box, weir or other appliance for the measurement of the waters flowing in such ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such Water Commissioner not to apportion or distribute any water through said ditch. [*Act approved March 2, 1905, § 7.*] (*9th Sess. Chap. 64.*)

4891. *United States may take ditches by right of eminent domain.*—That where in the course of the construction of irrigation works, the Secretary of the Interior, or any person or agent authorized to act in the premises, deems it necessary to use the right

of way of any existing ditch, canal or reservoir, such right and privilege may be enjoyed by the government of the United States under, and subject to, either of the following provisions, to-wit:

1. The existing ditch, canal or reservoir may be condemned as provided by law.

2. The existing ditch, canal or reservoir after having been condemned as provided for by law, may be enlarged or extended by the United States without charge or cost to the owner or owners thereof; *provided*, that such enlargement or extension shall not be so made as to deprive any owner of such reservoir, ditch or canal of the water rights and privileges owned or enjoyed, at the time of such enlargement or extension, but such rights shall be and remain undiminished and unimpaired by, through, or on account of such extension or enlargement, and the ownership or the right to the use and enjoyment of such water rights and privileges by any owner thereof in and through the enlarged or extended reservoir, canal or ditch shall never be questioned by the United States, its successors or assigns, but shall be perpetually recognized and facilitated. [*Act approved March 2, 1905.*] (*9th Sess. Chap. 70.*)

DIVISION THIRD.

PART I. OBLIGATIONS IN GENERAL.

II. CONTRACTS.

III. OBLIGATIONS IMPOSED BY LAW.

IV. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

PART I.

OBLIGATIONS IN GENERAL.

TITLE I. DEFINITION OF OBLIGATIONS.

II. INTERPRETATION OF OBLIGATIONS.

III. TRANSFER OF OBLIGATIONS.

IV. EXTINCTION OF OBLIGATIONS.

TITLE I.

DEFINITION OF OBLIGATIONS.

Section 4892. Obligation, what.

“ 4893. *How created and enforced*

4892. (§ 1920.) *Obligation, what.*—An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

Riddell v. Peck W. Co., 27 Mont. 59; 69 Pac. 243.

4893. (§ 1921.) *How created and enforced.*—An obligation arises either from:

1. The contract of the parties; or,
2. The operation of law.

An obligation arising from operation of law may be enforced by civil action or proceeding, or in the manner provided by law.

Riddell v. Peck W. Co., 27 Mont. 59; Bancroft v. Bancroft, 110 Cal. 385;
69 Pac. 243. 42 Pac. 896.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I. GENERAL RULES OF INTERPRETATION.

II. JOINT OR SEVERAL OBLIGATIONS.

III. CONDITIONAL OBLIGATIONS.

IV. ALTERNATIVE OBLIGATIONS.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

4894. (§ 1930.) *General rules.*—The rules which govern the interpretation of contracts are prescribed by part II. of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

Section 4895. Obligations, joint or several, etc.

“ 4896. *When joint and several.*

“ 4897. *Contribution between joint parties.*

4895. (§ 1940.) *Obligations, joint or several, etc.*—An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several.

Farmers' Bank v. Morse, 129 Cal. 241; 61 Pac. 1088.

4896. (§ 1941.) *When joint and several.*—All joint obligations and covenants shall hereafter be taken and held to be joint and several obligations and covenants.

Brownlee v. Young, 25 Mont. 40; 63 Pac. 799. Muth v. Goddard, 28 Mont. 246; 72 Pac. 623.

4897. (§ 1942.) *Contribution between joint parties.*—A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

Bunker v. Osborn, 132 Cal. 482; 64 Pac. 853.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

- Section 4898. Obligation, when conditional.*
 “ 4899. *Conditions, kinds of.*
 “ 4900. *Conditions precedent.*
 “ 4901. *Conditions concurrent.*
 “ 4902. *Condition subsequent.*
 “ 4903. *Performance, etc., of conditions, when essential.*
 “ 4904. *When performance, etc., excused.*
 “ 4905. *Impossible or unlawful conditions void.*
 “ 4906. *Conditions involving forfeiture, how construed.*

4898. (§ 1950.) *Obligation, when conditional.*—An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

Porter v. Plymouth Co., 29 Mont. 348; 74 Pac. 938. A purchaser of corporate stock, who, under his contract of purchase, was entitled to reconvey the same to the corporation, and receive the price paid, could not compel the corporation to repurchase the stock, without performing the concurrent condition of redelivery to the corporation. Where the option

of resale of the corporate stock was to be exercised “at the expiration of six months from this date” the seller was not bound to repurchase until the expiration of this period, and an offer to deliver the stock before the expiration of said period was premature, and of no avail.

Stockton v. Weber, 98 Cal. 440; 33 Pac. 332.

4899. (§ 1951.) *Conditions, kinds of.*—Conditions may be precedent, concurrent, or subsequent.

4900. (§ 1952.) *Conditions precedent.*—A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

4901. (§ 1953.) *Conditions concurrent.*—Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

Porter v. Plymouth Co., 29 Mont. 349;

Benson v. Shotwell, 87 Cal. 59; 25 Pac. 249.

4902. (§ 1954.) *Condition subsequent.*—A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

4903. (§ 1955.) *Performance, etc., of conditions, when essential.*—Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.

Porter v. Plymouth Co., 29 Mont. 348;

Cameron v. Burnham, 146 Cal. 584; 80 Pac. 929.

4904. (§ 1956.) *When performance, etc., excused.*—If a party to an obligation gives notice to another before the latter is in default, that he will not perform the same upon his part,

and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former.

Scribner v. Schenkel 128 Cal. 253; 60 Pac. 860.

4905. (§ 1957.) *Impossible or unlawful conditions void.*—A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

4906. (§ 1958.) *Conditions involving forfeitures, how construed.*—A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

Reclamation District v. Sels, 145 Cal. 184; 78 Pac. 638.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

Section 4907. Who has the right of selection.

“ 4908. *Right of selection, how lost.*

“ 4909. *Alternatives indivisible.*

“ 4910. *Nullity of one or more of alternative obligations.*

4907. (§ 1970.) *Who has the right of selection.*—If an obligation requires the performance of one of two acts in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

Dittrich v. Gobey, 119 Cal. 601; 51 Pac. 962.

4908 (§ 1971.) *Right of selection, how lost.*—If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is to be fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

4909 (§ 1972.) *Alternatives indivisible.*—The party having the right of selection between alternative acts, must select one of them in its entirety, and can not select part of one and part of another without the consent of the other party.

Rosenthal v. Perkins, 123 Cal. 243; 55 Pac. 804.

4910. (§ 1973.) *Nullity of one or more of alternative obligations.*—If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

- Section 4911. Burden of obligation not transferable.*
 “ 4912. *Rights arising out of obligation transferable.*
 “ 4913. *Non-negotiable instruments may be transferred.*
 “ 4914. *Covenants running with land, what.*
 “ 4915. *What covenants run with land.*
 “ 4916. *Same.*
 “ 4917. *Same.*
 “ 4918. *What covenants run with land when assigns are named.*
 “ 4919. *Who are bound by covenants.*
 “ 4920. *Who are not.*
 “ 4921. *Apportionment of covenants.*

4911. (§ 1980.) *Burden of obligation not transferable.*—The burden of an obligation may be transferred with the consent of the party entitled to its benefits, but not otherwise except as provided by § 4920 (1989).

Enscoe v. Fletcher, 1 C. App., 69; 82 Pac. 1075.

4912. (§ 1981.) *Rights arising out of obligation transferable.*—A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

Stadler v. First National Bank, 22 Mont. 206; 56 Pac. 115. A demand against the assignor of a non-negotiable contract cannot be set off against the assignee, unless due and payable when the assignment was made, and notice was unnecessary to prevent set-off of a demand becoming payable subsequently.

Cornish v. Woolverton 32 Mont. 473; 81 Pac. 10. This section protects the assignee of a non-negotiable contract against counter-claims and set-offs unless they are in existence and available at the date of the assignment.

Long Beach District v. Lutge 129 Cal. 412; 62 Pac. 36.

4913. (§ 1982.) *Non-negotiable instrument may be transferred.*—A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

4914. (§ 1983.) *Covenants running with land, what.*—Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

4915. (§ 1984.) *What covenants run with land.*—The only covenants which run with the land are those specified in this title, and those which are incidental thereto.

Los Angeles Co. v. Muir, 136 Cal. 42; 68 Pac. 308.

4916. (§ 1985.) *Same.*—Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land.

Los Angeles Co. v. Muir, 136 Cal. 42; 68 Pac. 308.

4917. (§ 1986.) *Same.*—The last section includes covenants “of warranty,” “for quiet enjoyment,” or for further assurance on the part of the grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

4918. (§ 1987.) *What covenants run with land when assigns are named.*—A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far as the assigns thus mentioned are concerned.

4919. (§ 1988.) *Who are bound by covenants.*—A covenant running with the land, binds those only who acquire the whole estate of the covenantor in some part of the property.

4920. (§ 1989.) *Who are not.*—No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for a breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits.

Gardner v. Samuels 116 Cal. 88; 47 Pac. 935.

4921. (§ 1990.) *Apportionment of covenants.*—Where several persons, holding by several titles, are subject to the burden or entitled to the benefits of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I. PERFORMANCE.

II. OFFER OF PERFORMANCE.

III. PREVENTION OF PERFORMANCE.

IV. ACCORD AND SATISFACTION.

V. NOVATION.

VI. RELEASE.

CHAPTER I.

PERFORMANCE.

- Section 4922. Obligation extinguished by performance.*
 “ 4923. *Performance by one of several joint debtors.*
 “ 4924. *Performance to one of joint creditors.*
 “ 4925. *Effect of directions by creditors.*
 “ 4926. *Partial performance.*
 “ 4927. *Payment, what.*
 “ 4928. *Application of general performance.*

4922. (§ 2000.) *Obligation extinguished by performance.*—Full performance of an obligation by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

Enscoe v. Fletcher, 1 C. App., 664; 82 Pac. 1075.

4923. (§ 2001.) *Performance by one of several joint debtors.*—Performance of an obligation by one of several persons who are jointly liable under it, extinguishes the liability of all.

4924. (§ 2002.) *Performance to one of joint creditors.*—An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

4925. (§ 2003.) *Effect of directions by creditors.*—If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligations in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

4926. (§ 2004.) *Partial performance.*—Partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

Riddell v. Peck W. Co., 27 Mont. 62; 69 Pac. 244. *Cavanaugh v. Casselman*, 88 Cal., 552; 26 Pac. 515.

4927. (§ 2005.) *Payment, what.*—Performance of an obligation for the delivery of money only is called payment.

Enscoe v. Fletcher, 1 C. App., 664; 82 Pac. 1075.

4928. (§ 2006.) *Application of general performance.*—Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

2. If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor, at the time of such performance, except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

3. If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

First—Of interest due at the time of the performance.

Second—Of principal due at that time.

Third—Of the obligation earliest in date of maturity.

Fourth—Of an obligation not secured by a lien or collateral undertaking.

Fifth—Of an obligation secured by a lien or collateral undertaking.

Grogan v. Valley T. Co., 30 Mont. 237; 76 Pac. 214. Where several written instruments relating to the same indebtedness contained no provision for the order of payment, parol evidence was

competent to show what application of a payment was agreed on.

Frutig v. Trafton 2 C. App. 48; 83 Pac. 70.

CHAPTER II.

OFFER OF PERFORMANCE.

Section 4929. Obligation extinguished by offer of performance.

" 4930. *Offer of partial performance.*

" 4931. *By whom to be made.*

" 4932. *To whom to be made.*

" 4933. *Where offer may be made.*

" 4934. *When offer must be made.*

" 4935. *Same.*

" 4936. *Compensation after delay in performance.*

" 4937. *Offer to be made in good faith.*

" 4938. *Conditional offer.*

" 4939. *Ability and willingness essential.*

" 4940. *Production of thing to be delivered not necessary.*

" 4941. *Thing offered to be kept separate.*

- Section 4942. Performance of condition precedent.*
“ 4943. *Written receipts.*
“ 4944. *Extinction of pecuniary obligation.*
“ 4945. *Objections to mode of offer.*
“ 4946. *Title to thing offered.*
“ 4947. *Custody of thing offered.*
“ 4948. *Effect of offer on accessories of obligation.*
“ 4949. *Creditor's retention of thing which he refuses to accept.*

4929. (§ 2020.) *Obligation extinguished by offer of performance.*—An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

Hanson v. Slaven, 98 Cal. 382; 33 Pac. 266.

4930. (§ 2021.) *Offer of partial performance.*—An offer of partial performance is of no effect.

4931. (§ 2022.) *By whom to be made.*—An offer of performance must be made by the debtor, or by some person on his behalf, and with his assent.

4932. (§ 2023.) *To whom to be made.*—An offer of performance must be made to the creditor, or to any one or two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and, if not, wherever the creditor may be found.

Ferrea v. Tubbs, 125 Cal. 690; 58 Pac. 308.

4933. (§ 2024.) *Where offer may be made.*—In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,
2. Wherever the person to whom the offer ought to be made can be found; or,
3. If such person cannot, with reasonable diligence, be found within the state, and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can with reasonable diligence, be found within the state; or,
4. If this cannot be done, then at any place within this state.

Swain v. Jacks, 125 Cal. 219; 57 Pac. 989.

4934. (§ 2025.) *When offer must be made.*—Where an obligation fixes a time for its performance, an offer of performance must be made at that time within reasonable hours, and not before nor afterwards.

Maurer v. King, 127 Cal. 117; 59 Pac. 290.

4935. (§ 2026.) *Same*.—Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon reasonable demand, has refused to perform.

4936. (§ 2027.) *Compensation after delay in performance*.—Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

Glock v. Howard Co., 123 Cal. 10; 55 Pac. 713.

4937. (§ 2028.) *Offer to be made in good faith*.—An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Horan v. Harrington, 130 Cal. 143; 62 Pac. 400.

4938. (§ 2029.) *Conditional offer*.—An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

Stanton v. Singleton, 126 Cal. 668; 59 Pac. 146.

4939. (§ 2030.) *Ability and willingness essential*.—An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

4940. (§ 2031.) *Production of thing to be delivered not necessary*.—The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted.

Latimer v. Capay Valley Co., 137 Cal. 288; 70 Pac. 82.

4941. (§ 2032.) *Thing offered to be kept separate*.—A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

4942. (§ 2033.) *Performance of condition precedent*.—When a debtor is entitled to the performance of a condition to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

Wadleigh v. Phelps, 149 Cal. 642; 87 Pac. 93.

4943. (§ 2034.) *Written receipts*.—A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Ferrea v. Tubbs, 125 Cal. 690; 58 Pac. 308.

4944. (§ 2035.) *Extinction of pecuniary obligation*.—An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this state, of good repute, and notice thereof is given to the creditor.

Owen v. Herzikoff, 2 C. App., 623; 84 Pac. 274.

4945. (§ 2036.) *Objections to mode of offer.*—All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

Colton v. Oakland Bank, 137 Cal. 382; 70 Pac. 225.

4946. (§ 2037.) *Title to thing offered.*—The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

Hewes v. Germain Co., 106 Cal. 446; 39 Pac. 853.

4947. (§ 2038.) *Custody of thing offered.*—The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

4948. (§ 2039.) *Effect of offer on accessories of obligation.*—An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation and has the same effect upon all its incidents as a performance thereof.

Wadleigh v. Phelps, 149 Cal. 642; 87 Pac. 93.

4949. (§ 2040.) *Creditor's retention of thing which he refuses to accept.*—If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE.

Section 4950. *What excuses performance, etc.*

“ 4951. *Effect of prevention of performance.*

“ 4952. *Same.*

“ 4953. *Effect of refusal to accept performance before offer.*

4950. (§ 2050.) *What excuses performance, etc.*—The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible, superhuman cause, or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended, or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

McCue v. Bradbury, 149 Cal. 113; 84 Pac. 993.

4951. (§ 2051.) *Effect of prevention of performance.*—If the performance of an obligation be prevented by the creditor the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

Frese v. Moore, 1 C. App., 592; 82 Pac. 542.

4952. (§ 2052.) *Same.*—If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

4953. (§ 2053.) *Effect of refusal to accept performance before offer.*—A refusal by a creditor to accept performance made before an offer thereof, is equivalent to an offer and refusal, unless before performance is actually due, he gives notice to the debtor of his willingness to accept it.

Randol v. Tatum, 98 Cal. 399; 33 Pac. 433.

CHAPTER IV.

ACCORD AND SATISFACTION.

Section 4954. *Accord, what.*

“ 4955. *Effect of accord.*

“ 4956. *Satisfaction, what.*

“ 4957. *Accord of liquidated debt.*

4954. (§ 2060.) *Accord, what.*—An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

Creighton v. Gregory, 142 Cal. 41; 75 Pac. 569.

4955. (§ 2061.) *Effect of accord.*—Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

Creighton v. Gregory, 142 Cal. 41; 75 Pac. 569.

4956. (§ 2062.) *Satisfaction, what.*—Acceptance by the creditor, of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

Creighton v. Gregory, 142 Cal. 41; 75 Pac. 569.

4957. (§ 2063.) *Accord of liquidated debt.*—Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or

rendered in pursuance of an agreement in writing, for that purpose, though without any new consideration, extinguishes the obligation.

Enscoe v. Fletcher, 1 C. App., 665; 82 Pac. 1075.

CHAPTER V.

NOVATION.

Section 4958. Novation, what.

" 4959. *Modes of novation.*

" 4960. *Novation a contract.*

" 4961. *Rescission of novation.*

4958. (§ 2070.) *Novation, what.*—Novation is the substitution of a new obligation for an existing one.

4959. (§ 2071.) *Modes of novation.*—Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

2. By the substitution of a new debtor in place of the old one; with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one with intent to transfer the rights of the latter to the former.

Carpy v. Dowdell, 131 Cal. 497; 63 Pac. 778.

4960. (§ 2072.) *Novation a contract.*—Novation is made by contract, and is subject to all the rules concerning contracts in general.

Market Street Co. v. Hellman, 109 Cal. 596; 42 Pac. 225.

4961. (§ 2073.) *Rescission of novation.*—When the obligation of a third person, or an order upon such person, is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and the fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

CHAPTER VI.

RELEASE.

Section 4962. Obligation extinguished by release.

" 4963. *Certain claims not affected by general release.*

" 4964. *Release of several joint debtors.*

4962. (§ 2080.) *Obligation extinguished by release.*—An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

Enscoe v. Fletcher, 1 C. App., 664; 82 Pac. 1075.

4963. (§ 2081.) *Certain claims not affected by general release.*—A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Rued v. Cooper, 119 Cal. 469; 51 Pac. 704.

4964. (§ 2082.) *Release of several joint debtors.*—A release of one of two or more joint debtors does not extinguish the obligation of any of the others unless they are mere guarantors; nor does it affect their rights to contribution from him.

Enscoe v. Fletcher, 1 C. App., 665; 82 Pac. 1075.

PART II.

CONTRACTS.

- TITLE I. NATURE OF A CONTRACT.
- II. MANNER OF CREATING CONTRACTS.
- III. INTERPRETATION OF CONTRACTS.
- IV. UNLAWFUL CONTRACTS.
- V. EXTINCTION OF CONTRACTS.

TITLE I.

NATURE OF A CONTRACT.

- CHAPTER I. DEFINITION.
- II. PARTIES.
- III. CONSENT.
- IV. OBJECT.
- V. CONSIDERATION.

CHAPTER I.

DEFINITION.

Section 4965. Contract, what.

“ 4966. *Essential elements of contract.*

4965. (§ 2090.) *Contract, what.*—A contract is an agreement to do or not to do a certain thing.

Oppenheimer v. Regan, 32 Mont. 116; Breckenridge v. Crocker, 78 Cal. 536;
79 Pac. 697. 21 Pac. 179.

4966. (§ 2091.) *Essential elements of contract.*—It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and
4. A sufficient cause or consideration.

Jacks v. Estee, 139 Cal. 512; 73 Pac. 247.

CHAPTER II.

PARTIES.

- Section 4967. Who may contract.*
 “ 4968. *Minors, etc.*
 “ 4969. *Identification of parties necessary.*
 “ 4970. *When contract for benefit of third person may be enforced.*

4967. (§ 2100.) *Who may contract.*—All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

4968. (§ 2101.) *Minors, etc.*—Minors and persons of unsound mind have only such capacity as is defined by part I., of division one of this code.

4969. (§ 2102.) *Identification of parties necessary.*—It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

4970. (§ 2103.) *When contract for benefit of third person may be enforced.*—A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

McDonald v. American Bank, 25 Mont. 489; 65 Pac. 909. Plaintiffs were not entitled to enforce a contract for the payment of the balance of the purchase price of a mine as a contract made for their benefit, because this section does not ap-

ply to executory contracts without consideration.

Western Co. v. S. B. Co., 31 Mont. 450; 78 Pac. 775.

Washer v. Independent Co. 142 Cal. 708; 76 Pac. 654.

CHAPTER III.

CONSENT.

- Section 4971. Essentials of consent.*
 “ 4972. *Consent, when voidable.*
 “ 4973. *Apparent consent when not free.*
 “ 4974. *When deemed to have been obtained by fraud, etc.*
 “ 4975. *Duress, what.*
 “ 4976. *Menace, what.*
 “ 4977. *Fraud, actual or constructive.*
 “ 4978. *Actual fraud, what.*
 “ 4979. *Constructive fraud, what.*
 “ 4980. *Actual fraud a question of fact.*
 “ 4981. *Undue influence, what.*
 “ 4982. *Mistake, what.*
 “ 4983. *Mistake of fact.*
 “ 4984. *Mistake of law.*
 “ 4985. *Mistake of foreign laws.*
 “ 4986. *Mutuality of consent.*
 “ 4987. *Communication of consent.*

Section 4988. Mode of communicating acceptance of proposal.

" 4989. *When communication deemed complete.*

" 4990. *Acceptance by performance of conditions.*

" 4991. *Acceptance must be absolute.*

" 4992. *Revocation of proposal.*

" 4993. *Revocation, how made.*

" 4994. *Ratification of contract void for want of consent.*

" 4995. *Assumption of obligation by acceptance of benefits.*

4971. (§ 2110.) *Essentials of consent.*—The consent of the parties to a contract must be:

1. Free.
2. Mutual; and,
3. Communicated by each to the other.

Niles v. Hancock, 140 Cal. 162; 73 Pac. 840.

4972. *Consent, when voidable.*—A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

Westerfeld v. New York I. Co., 129 Cal. 82; 58 Pac. 92.

4973. (§ 2112.) *Apparent consent when not free.*—An apparent consent is not real or free when obtained through:

1. Duress.
2. Menace.
3. Fraud.
4. Undue influence, or,
5. Mistake.

Bullard v. Smith, 28 Mont. 403; 72 Pac. 765. The defense of duress or menace is based upon the proposition that the consent of the party to the contract over whom it was exercised was not free.

Colton v. Stanford 82 Cal. 399; 23 Pac. 16.

4974. (§ 2113.) *When deemed to have been obtained by fraud, etc.*—Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

* *Elliott v. Southern P. Co.*, 145 Cal. 448; 79 Pac. 420.

4975. (§ 2114.) *Duress, what.*—Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

Bullard v. Smith, 28 Mont. 403; 72 Pac. 765.

Woodham v. Allen, 130 Cal. 198; 62 Pac. 822.

4976. (§ 2115.) *Menace, what.*—Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3; of the last section.

2. Of unlawful and violent injury to the person or property of any such person, as is specified in the last section; or,

3. Of injury to the character of any such person.

Bullard v. Smith, 28 Mont. 403; 72 Pac. 765.
 Woodham v. Allen, 130 Cal. 198; 62 Pac. 398.

4977. (§ 2116.) *Fraud, actual or constructive.*—Fraud is either actual or constructive.

Loaiza v. Court, 85 Cal. 30; 24 Pac. 707.

4978. (§ 2117.) *Actual fraud, what.*—Actual fraud, within the meaning of this chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

Sathre v. Rolfe, 31 Mont. 88; 77 Pac. 432.
 the United States unlawfully and fraudulently; and the court in a case between them as to the land, will leave the parties where it finds them.

Keely v. Gregg, 33 Mont. 223, subd. 4; 82 Pac. 28.
 A trust cannot result in one of two persons for the benefit of the other, if they agreed to obtain land from Muller v. Palmer, 144 Cal. 312; 77 Pac. 954.

4979. (§ 2118.) *Constructive fraud, what.*—Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law especially declares to be fraudulent, without respect to actual fraud.

Estate of Johnson, 134 Cal. 63; 66 Pac. 847.

4980. (§ 2119.) *Actual fraud a question of fact.*—Actual fraud is always a question of fact.

Moore v. Copp, 119 Cal. 434; 51 Pac. 630.

4981. (§ 2120.) *Undue influence, what.*—Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and an unfair advantage of another's necessities or distress.

Dimond v. Sanderson, 103 Cal. 102, subd. 1; 37 Pac. 189.

4982. (§ 2121.) *Mistake, what.*—Mistake may be either of fact or law.

Douglass v. Todd, 98 Cal. 659; 31 Pac. 623.

4983. (§ 2122.) *Mistake of fact.*—Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact, past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

White v. Stevenson, 144 Cal. 110; 77 Pac. 828.

4984. (§ 2123.) *Mistake of law.*—Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Sathre v. Rolfe, 31 Mont. 88; 77 Pac. 432.

Bottego v. Carroll, 31 Mont. 126; 77 Pac. 430. Where plaintiff brought suit under the second subdivision to recover an overpayment made on a repurchase of property sold under foreclosure, and alleged that she made the payment under misapprehension as to her right to re-

deem, and the proof showed that it was a mooted question of law as to the right of redemption at the time, and defendants acted in good faith in their contention that her right of redemption was barred, there was a fatal variance.

Gregory v. Clabrough, 129 Cal. 478; 62 Pac. 72.

4985. (§ 2124.) *Mistake of foreign laws.*—Mistake of foreign laws is a mistake of fact.

4986. (§ 2125.) *Mutuality of consent.*—Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

Farmers' Bank v. De Shorb, 137 Cal. 692; 70 Pac. 771.

4987. (§ 2126.) *Communication of consent.*—Consent can be communicated with effect only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Niles v. Hancock, 140 Cal. 162; 73 Pac. 840.

4988. (§ 2127.) *Mode of communicating acceptance of proposal.*—If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

4989. (§ 2128.) *When communication deemed complete.*—Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

4990. (§ 2129.) *Acceptance by performance of conditions.*—Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Gallagher v. Equitable Co., 141 Cal. 706; 75 Pac. 329.

4991. (§ 2130.) *Acceptance must be absolute.*—An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

Four Co. v. United Producers, 145 Cal. 625; 79 Pac. 366.

4992. (§ 2131.) *Revocation of proposal.*—A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

Wristen v. Bowles, 82 Cal. 87; 22 Pac. 1136.

4993. (§ 2132.) *Revocation, how made.*—A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by §§ 4987 (2126) and 4989 (2128) before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

4994. (§ 2133.) *Ratification of contract void for want of consent.*—A contract which is voidable solely for want of due consent may be ratified by a subsequent consent.

4995. (§ 2134.) *Assumption of obligation by acceptance of benefits.*—A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

Colpe v. Jubilee Co., 2 C. App. 397; 84 Pac. 324.

CHAPTER IV.

OBJECT.

- Section 4996. Object, what.*
 “ 4997. *Requisites of object.*
 “ 4998. *Impossibility, what.*
 “ 4999. *When contract wholly void.*
 “ 5000. *When contract partially void.*

4996. (§ 2150.) *Object, what.*—The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Glass v. Basin Co., 31 Mont. 32; 77 Pac. 304.

4997. (§ 2151.) *Requisites of object.*—The object of the contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

Glass v. Basin Co. 31 Mont. 32; 77 Pac. 304.

4998. (§ 2152.) *Impossibility, what.*—Everything is deemed possible except that which is impossible in the nature of things.

4999. (§ 2153.) *When contract wholly void.*—Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

Glass v. Basin Co., 31 Mont. 32; 77 Pac. 304. Sutliff v. Seidenberg, 132 Cal. 65; 64 Pac. 131.

5000. (§ 2154.) *When contract partially void.*—Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

McVicker v. McKenzie 136 Cal. 660; 69 Pac. 495.

CHAPTER V.

CONSIDERATION.

- Section 5001. Good consideration, what.*
 “ 5002. *How far legal or moral obligation is a good consideration.*
 “ 5003. *Consideration lawful.*
 “ 5004. *Effect of illegality.*
 “ 5005. *Consideration executed or executory.*
 “ 5006. *Executory consideration.*
 “ 5007. *How ascertained.*
 “ 5008. *Effect of impossibility of ascertaining consideration.*
 “ 5009. *Same.*
 “ 5010. *Written instrument presumptive evidence of consideration.*
 “ 5011. *Burden of proof to invalidate sufficient consideration.*

5001. (§ 2160.) *Good consideration, what.*—Any benefit conferred or agreed to be conferred upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

Schaadt v. Mutual I. Co., 2 C. App. 719; 84 Pac. 249.

5002. (§ 2161.) *How far legal or moral obligation is a good consideration.*—An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

5003. (§ 2162.) *Consideration lawful.*—The consideration of a contract must be lawful within the meaning of § 5051 (2240).

Glass v. Basin Co., 31 Mont. 32; 77 Pac. 304. Berka v. Woodward, 125 Cal. 122; 57 Pac. 777.

5004. (§ 2163.) *Effect of illegality.*—If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

Glass v. Basin Co., 31 Mont. 32 77 Pac. 304. Ripperdan v. Weldy, 149 Cal. 676; 87 Pac. 276.

5005. (§ 2164.) *Consideration executed or executory.*—A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of chapter IV., of this title.

La Grill v. Mallard, 90 Cal. 375; 27 Pac. 294.

5006. (§ 2165.) *Executory consideration.*—When a consideration is executory it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard.

5007. (§ 2166.) *How ascertained.*—When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an uninterested party, the consideration must be so much money as the object of the contract is reasonably worth.

5008. (§ 2167.) *Effect of impossibility of ascertaining consideration.*—Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

5009. (§ 2168.) *Same.*—Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void.

5010. (§ 2169.) *Written instrument presumptive evidence of consideration.*—A written instrument is presumptive evidence of a consideration.

Edwards v. Spalding, 20 Mont. 59; 49 Pac. 445.

Noyes v. Young, 32 Mont. 236; 79 Pac. 1065. In an action on an instrument acknowledging an indebtedness and promising to pay it a consideration need

not be alleged or proved independently of the proof of the contract itself.

Borden v. Lynch, 34 Mont. 511; 87 Pac. 611.

Kennedy v. Lee, 147 Cal. 603; 82 Pac. 257.

5011. (§ 2170.) *Burden of proof to invalidate sufficient consideration.*—The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513.

Noyes v. Young, 32 Mont. 236; 79 Pac. 1065.

Borden v. Lynch, 34 Mont. 511, 87 Pac. 611.

Castor v. Bernstein, 2 C. App., 708; 84 Pac. 244.

TITLE II.

MANNER OF CREATING CONTRACTS.

Section 5012. *Contracts, express or implied.*

“ 5013. *Express contract, what.*

“ 5014. *Implied contract, what.*

“ 5015. *What contracts may be oral.*

“ 5016. *Contract not in writing through fraud, may be enforced against fraudulent party.*

“ 5017. *When contracts must be written.*

“ 5018. *Effect of writing.*

“ 5019. *Contract in writing, takes effect when.*

“ 5020. *Provisions of chapter on transfers of real property.*

“ 5021. *Corporate seal, how affixed.*

“ 5022. *Provisions abolishing seals made applicable.*

“ 5023. *Instruments effectual without seal.*

5012. (§ 2180.) *Contracts, express or implied.*—A contract is either express or implied.

5013. (§ 2181.) *Express contract, what.*—An express contract is one the terms of which are stated in words.

Nevills v. Moore Co., 135 Cal. 563; 67 Pac. 1054.

5014. (§ 2128.) *Implied contract, what.*—An implied contract is one the existence and terms of which are manifested by conduct.

Jennings v. California Bank, 79 Cal. 326; 21 Pac. 852.

5015. (§ 2183.) *What contracts may be oral.*—All contracts may be oral except such as are specially required by statute to be in writing.

Converse v. Scott, 137 Cal. 243; 70 Pac. 13.

5016. (§ 2184.) *Contract not in writing through fraud, may be enforced against fraudulent party.*—Where a contract, which

is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

5017. (§ 2185.) *When contracts must be written.*—The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or mis-carriage of another, except in the cases provided for in § 5660 (3612) of this code.

3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accept or receive part of such goods, chattels, or the evidences, or some of them, of such things, or pay at the time some part of the purchase money; but when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, the price, and the names of the purchasers and person on whose account the sale is made, is a sufficient memorandum.

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

6. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation, or a commis-sion.

Great Falls Co. v. G. N. R. Co., 21 Mont. 502; 54 Pac. 967. A license to lay a water main through land may be given by parol, as no interest in the land is given, but the license may be revoked at any time, even after it has been executed and money expended in reliance thereon. The licensee has a reasonable time after notice of revocation, in which to remove his property.

King v. Benson, 22 Mont. 258; 56 Pac. 281. A recovery cannot be had for services in effecting a sale of realty rendered by plaintiff and accepted by defendant, unless there is a note or memorandum in writing of a contract for such services.

Cobban v. Hecklen, 27 Mont. 257; 70 Pac. 809. An oral contract to sell land, which has been partly performed, is mutual, for both parties are reciprocally bound, the one to convey, and the other to pay the purchase price.

Easterly v. Jackson, 29 Mont. 502; 75 Pac. 358.

Landt v. Schneider, 31 Mont. 19; 77 Pac. 308.

McCormick v. Johnson, 31 Mont. 269; 78 Pac. 502.

Brophy v. Idaho Co., 31 Mont. 283; 78 Pac. 494.

Ayotte v. Nadeau, 32 Mont. 519; 81 Pac. 151. A contract between tenants in common for the erection of a house on the common property by one of them at his own expense, and requiring him to make an equal division of the rents when the rents received equaled one-half the cost, is not a contract of leasing within this section.

Marshall v. Trerise, 33 Mont. 31; 81 Pac. 401. A recovery cannot be had for services rendered by a broker where it did not appear that his contract of employment to sell real estate was in writing, or that any note or memorandum thereof signed by the party to be charged, had been executed as required by this section.

Case v. Kramer, 34 Mont. 149; 85 Pac. 879.

5018. (§ 2186.) *Effect of writing.*—The execution of a contract in writing, whether the law requires it to be written or not, supercedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

Riddell v. Peck W. Co., 27 Mont. 57; 69 Pac. 242. Evidence of oral promises or agreements, made prior to or contemporaneously with the execution of a written contract purporting to embrace all its terms, which contradict, change, add to, or subtract from the express terms, is inadmissible.

Armington v. Stelle, 27 Mont. 18; 69 Pac. 116. Evidence of a contemporaneous agreement between the parties to a written sublease of a lode mining claim, that in case the sublessors should buy the property the lease would be extended, is inadmissible.

Easterly v. Jackson, 29 Mont. 502; 75 Pac. 358.

Largey v. Leggatt, 30 Mont. 148; 75 Pac. 950. Evidence of negotiations and conversations immediately preceding the execution of a written contract is incompetent to show an agreement concerning its matter made by one claimed to be bound thereby.

Sathre v. Rolfe, 31 Mont. 88; 77 Pac. 432.

Ames v. Southern P. Co., 141 Cal. 734; 75 Pac. 310.

5019. (§ 2187.) *Contract in writing, takes effect when.*—A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

Ivey v. Kern County, 115 Cal. 202; 46 Pac. 926.

5020. (§ 2188.) *Provisions of chapter on transfers of real property.*—The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional, apply to all written contracts.

5021. (§ 2189.) *Corporate seal how affixed.*—A corporate or official seal may be affixed to an instrument by the mere impression upon the paper or other material on which such instrument is written.

5022. (§ 2190.) *Provisions abolishing seals made applicable.*—All distinctions between sealed and unsealed instruments are abolished.

Estate of Kennedy, 129 Cal. 389; 62 Pac. 64.

5023. (§ 2191.) *Instruments effectual without seal.*—All instruments shall be as effectual without a seal as if the same had a seal attached thereto, but this section shall not apply to municipal or other corporations which by law are required to attest their action under seal.

Gordon v. San Diego, 101 Cal. 528; 36 Pac. 18.

TITLE III.

INTERPRETATION OF CONTRACTS.

Section 5024. *Uniformity of interpretation.*

“ 5025. *Contracts, how to be interpreted.*

“ 5026. *Intention of parties, how ascertained.*

“ 5027. *Intention to be ascertained from language.*

“ 5028. *Interpretation of written contracts.*

“ 5029. *Writing, when disregarded.*

“ 5030. *Effect to be given to every part of contract.*

“ 5031. *Several contracts, when taken together.*

- Section 5032. *Interpretation in favor of contract.*
“ 5033. *Words to be understood in usual sense.*
“ 5034. *Technical words.*
“ 5035. *Law of place.*
“ 5036. *Contracts explained by circumstances.*
“ 5037. *Contract restricted to its evident object.*
“ 5038. *Interpretation in sense in which promisor believed promisee to rely.*
“ 5039. *Particular clause subordinate to general intent.*
“ 5040. *Contract, partly written and partly printed.*
“ 5041. *Repugnances, how reconciled.*
“ 5042. *Inconsistent words rejected.*
“ 5043. *Words to be taken most strongly against whom.*
“ 5044. *Reasonable stipulations, when implied.*
“ 5045. *Necessary incidents implied.*
“ 5046. *Time of performance of contract.*
“ 5047. *Time, when of essence.*
“ 5048. *When joint and several.*
“ 5049. *Same.*
“ 5050. *Executed and executory contracts, what.*

5024. (§ 2200.) *Uniformity of interpretation.*—All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

Schroeder v. Imperial Co., 132 Cal. 19 ; 3 Pac. 1074.

5025. (§ 2201.) *Contracts, how to be interpreted.*—A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

Ames v. S. P. Co., 141 Cal. 731 ; 75 Pac. 310.

5026. (§ 2202.) *Intention of parties, how ascertained.*—For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

5027. (§ 2203.) *Intention to be ascertained from language.*—The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Harris v. Root, 28 Mont. 166 ; 72 Pac. 31. Ames v. S. P. Co., 141 Cal. 734 ; 75 Pac. 310.

5028. (§ 2204.) *Interpretation of written contracts.*—When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible ; subject, however, to the other provisions of this title.

Stadler v. First N. Bank, 22 Mont. 104 ; 56 Pac. 114. A provision in a note that is negotiable at a particular bank is not a waiver of the effect of a stipulation for payment of attorney's fees, which, under other statutory provisions, renders the note non-negotiable.
Riddell v. Peck W. Co., 27 Mont. 57 ; 9 Pac. 242. Bullard v. Smith, 28 Mont. 399 ; 72 Pac. 763. Easterly v. Jackson, 29 Mont. 502 ; 75 Pac. 358. Rose v. N. R. R. Co., 35 Mont. 77 ; 88 Pac. 767. Cutten v. Pearsall, 146 Cal. 694 ; 81 Pac. 25.

5029. (§ 2205.) *Writing, when disregarded.*—When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

Lassing v. James, 107 Cal. 355; 40 Pac. 534.

5030. (§ 2206.) *Effect to be given to every part of contract.*—The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Ackley v. Phenix I. Co., 25 Mont. 280; 64 Pac. 668.

Bickford v. Kirwin, 30 Mont. 7; 75 Pac. 520.

Burnett v. Piercy, 149 Cal. 189; 86 Pac. 603.

5031. (§ 2207.) *Several contracts, when taken together.*—Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Cornish v. Woolverton, 32 Mont. 470; 81 Pac. 8. A note was secured by a mortgage of even date therewith, and the mortgage provided that the mortgagor should pay the taxes and insurance etc., and in default of performance of any covenant the principal and interest should become due, and the mortgage be subject to foreclosure, at the option of the mortgagee, and that, if foreclosure proceedings were commenced, \$150 should be allowed as an attorney's fee. The note and mortgage are parts of the same contract under this section.

Bartels v. Davis, 34 Mont. 290; 85 Pac. 1028. Where a note, deed and defeasance were executed at the same time, referred to the same subject matter, and were a part of the same transaction,

the three instruments should be construed as one under this section.

Talbott v. Heinze, 25 Mont. 9; 63 Pac. 626. A note was given in consideration of the written contracts of the payee, made a few days before the date of the note, that he would on or before a certain day, purchase or procure a purchaser for the interest of the maker in certain mines at a stated price, and that, if he failed to do so, the maker would be absolved from all liability to convey such interests. The contracts were admissible under this section, as relating to the same matters as the note in suit between the same parties, and as parts of substantially one transaction.

Getz Co. v. Federal Co., 147 Cal. 118; 81 Pac. 416.

5032. (§ 2208.) *Interpretation in favor of contract.*—A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done, without violating the intention of the parties.

Messer v. Hibernia Society, 149 Cal. 127; 84 Pac. 835.

5033. (§ 2209.) *Words to be understood in usual sense.*—The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Chambers v. Lowry, 21 Mont. 480; 54 Pac. 817.

Harris v. Root, 28 Mont. 166; 72 Pac. 431.

Collins v. Metropolitan I. Co., 32 Mont. 337; 80 Pac. 610. The assured represented in his application for an insurance policy that he was not "connected" with the sale of spirituous liquors. The word "connected" must be presumed to have been used in its popu-

lar sense involving the idea of permanency.

In re Klein's Estate, 35 Mont. 205; 88 Pac. 798. The word "firm" was used in the will by the testator as an equivalent for "Gans & Klein," and had no technical reference to the copartnership of Gans & Klein.

Adams v. Hopkins, 144 Cal. 37; 77 Pac. 712.

5034. (§ 2210.) *Technical words.*—Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Cambers v. Lowry, 21 Mont. 478; 54 Pac. 816. Witnesses may testify as to the meaning of the following words in a mining lease, "there shall be no ores stoped, except at the 300 foot level, and

all ores shall be extended from the drifts, raises or winzes."

Adams v. Hopkins, 144 Cal. 37; 77 Pac. 712.

5035. (§ 2211.) *Law of place.*—A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

5036. (§ 2212.) *Contracts explained by circumstances.*—A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates.

Alvey v. Continental Co., 2 C. App. 257; 83 Pac. 285.

5037. (§ 2213.) *Contract restricted to its evident object.*—However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Alvey v. Continental Co., 2 C. App. 257; 83 Pac. 285.

5038. (§ 2214.) *Interpretation in sense in which promisor believed promisee to rely.*—If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

Blankenship v. Decker, 34 Mont. 300; 35 Pac. 1037. Where the attendant facts and circumstances in the making of an agreement are resorted to as an aid to an understanding of it, no greater burden rests on the promisor than to show

by a preponderance of the evidence that the promisee understood it as the promisor believed he understood it.

Ennis Brown Co. v. Hurst, 1 C. App. 759; 82 Pac. 1056.

5039. (§ 2215.) *Particular clause subordinate to general intent.*—Particular clauses of a contract are subordinate to its general intent.

5040. (§ 2216.) *Contract, partly written and partly printed.*—Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Bickford v. Kirwin, 30 Mont. 6; 75 Pac. 520.

Alvey v. Continental Co., 2 C. App. 257; 83 Pac. 285.

5041. (§ 2217.) *Repugnancies, how reconciled.*—Repugnancy in a contract must be reconciled, if possible, by such an in-

terpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

Ackley v. Phenix I. Co., 25 Mont. 281; 64 Pac. 668.

5042. (§ 2218.) *Inconsistent words rejected.*—Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

Ames v. S. P. Co., 141 Cal. 731; 75 Pac. 310.

5043. (§ 2219.) *Words to be taken most strongly against whom.*—In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Bickford v. Kirwin, 30 Mont. 7; 75 Pac. 520.

Blankenship v. Decker, 34 Mont. 300; 85 Pac. 1037. Where the evidence tends to prove that the promisee wrote the agreement and selected the terms there-

of, the presumption under this section gives way to the contrary one that the latter caused the uncertainty, and the burden rests on him to remove it.

Miller v. Grunsky, 141 Cal. 454; 66 Pac. 858.

5044. (§ 2220.) *Reasonable stipulations, when implied.*—Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

5045. (§ 2221.) *Necessary incidents implied.*—All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

5046. (§ 2222.) *Time of performance of contract.*—If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

Nason v. Lingle, 143 Cal. 366; 77 Pac. 71.

5047. (§ 2223.) *Time, when of essence.*—Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

5048. (§ 2224.) *When joint and several.*—Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

McKee v. Cunningham, 2 C. App. 687; 84 Pac. 260.

5049. (§ 2225.) *Same.*—A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

Farmers' Bank v. Altura Co., 129 Cal. 269; 61 Pac. 1077.

5050. (§ 2226.) *Executed and executory contracts, what.*—An executed contract is one the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

- Section 5051. *What is unlawful.*
- “ 5052. *Certain contracts unlawful.*
 - “ 5053. *Employes protected from negligence.*
 - “ 5054. *Contracts fixing damages, void.*
 - “ 5055. *Exception.*
 - “ 5056. *Restraints upon legal proceedings.*
 - “ 5057. *Contract in restraint of trade, void.*
 - “ 5058. *Exception in favor of sale of good will.*
 - “ 5059. *Exception in favor of partnership arrangements.*
 - “ 5060. *Contract in restraint of marriage, void.*

5051. (§ 2240.) *What is unlawful.*—That is not lawful which is:

- 1. Contrary to an express provision of law.
- 2. Contrary to the policy of express law, though not expressly prohibited; or,
- 3. Otherwise contrary to good morals.

Finlen v. Heinze, 28 Mont. 566; 73 Pac. 127. leged that the business has never been in operation. The contract is contrary to this section and void.

Glass v. Basin Co., 31 Mont. 31; 77 Pac. 304. The contract pleaded by plaintiffs set forth that plaintiffs should be directors until the business of defendant should be in successful operation. Over four years elapsed and it is al-

Rose v. N. P. R. R. Co., 35 Mont. 78; 88 Pac. 767.

Flynn v. Mowry, 131 Cal. 488; 63 Pac. 724.

5052. (§ 2241.) *Certain contracts unlawful.*—All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or for wilful injury to the person or property of another, or violation of law, whether wilful or negligent, are against the policy of the law.

Morrill v. Nightingale, 93 Cal. 457; 28 Pac. 1068.

5053. (§ 2242.) *Employes protected from negligence.*—Any contract or agreement entered into by any person, company or corporation. with its servants or employes, whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, shall be absolutely null and void.

5054. (§ 2243.) *Contracts fixing damages, void.*—Every contract by which the amount of damage to be paid, or other compen-

sation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in the next section.

Bennett B. Co. v. Fitchett, 24 Mont. 468; 62 Pac. 780.

Deuninck v. West G. Co., 28 Mont. 259; 72 Pac. 619. A contract bound an irrigation company to furnish to plaintiff a certain amount of water during a certain season, and provided if the company should for any reason fail to deliver the water, it would return to plaintiff money

paid by him, and plaintiff agreed to accept the same and release the company for any damage arising from such failure. This contract falls within this section, and is void on its face to the extent of the liquidated damages agreed on.

Long Beach v. Dodge, 135 Cal. 404; 67 Pac. 499.

5055. (§ 2244.) *Exception.*—The parties to a contract may agree therein upon an amount which shall be presumed to be an amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Deuninck v. West G. Co., 28 Mont. 259; 72 Pac. 619. Where suit is brought on a contract for actual damages, the defendant may show that the

contract for stipulated damages is valid under this section.

Long Beach v. Dodge, 135 Cal. 405; 67 Pac. 499.

5056. (§ 2245.) *Restraints upon legal proceedings.*—Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract, by the usual proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

Wortman v. M. C. Co., 22 Mont. 278; 56 Pac. 321. This section not applicable to prior contracts is an enactment of the common law as it existed in the state prior to the adoption of the codes in 1895. A provision of a contract by which the construction to be placed on

it by the agent of one of the parties shall be final, without the right of appeal to the courts, is void.

Cotter v. A. O. U. W., 23 Mont. 82; 57 Pac. 650. This section does not apply to contracts made before the adoption of the Civil Code.

5057. (§ 2246.) *Contract in restraint of trade, void.*—Any contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than is provided for by the next two sections, is to that extent void.

Getz Co. v. Federal Co., 147 Cal. 118; 81 Pac. 416.

5058. (§ 2247.) *Exception in favor of sale of good will.*—One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

Merchants Co. v. Sterling, 124 Cal. 431; 57 Pac. 468.

5059. (§ 2248.) *Exception in favor of partnership agreements.*—Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

5060. (§ 2249.) *Contract in restraint of marriage, void.*—Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I. CONTRACTS, HOW EXTINGUISHED.

II. RESCISSION.

III. ALTERATION AND CANCELLATION.

CHAPTER I.

CONTRACTS, HOW EXTINGUISHED.

5061. (§ 2260.) A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

CHAPTER II.

RESCISSION.

Section 5062. Rescission extinguishes contract.

“ 5063. *When party may rescind.*

“ 5064. *When stipulations against right to rescind do not defeat it.*

“ 5065. *Rescission, how effected.*

5062. (§ 2270.) *Rescission extinguished contract.*—A contract is extinguished by its rescission

5063. (§ 2271.) *When party may rescind.*—A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

2. If, through the fault of the party as to whom he rescinds the consideration for his obligation fails, in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

Cotter v. Butte S. Co., 31 Mont. 133; Sterling v. Gregory, 149 Cal. 121; 85
77 Pac. 510. Pac. 305.

5064. (§ 2272.) *When stipulations against right to rescind do not defeat it.*—A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

5065. (§ 2273.) *Rescission, how effected.*—Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract, or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

Cotter v. Butte S. Co., 31 Mont. 134;
77 Pac. 510.

Bernard v. Sloan, 2 C. App. 744; 84
Pac. 232.

CHAPTER III.

ALTERATION AND CANCELLATION.

Section 5066. Alteration of verbal contract.

“ 5067. *Sealed contracts, how modified.*

“ 5068. *Extinction by cancellation, etc.*

“ 5069. *Extinction by unauthorized alteration.*

“ 5070. *Alteration of duplicate, not to prejudice.*

5066. (§ 2280.) *Alteration of verbal contract.*—A contract not in writing may be altered in any respect by consent of the parties in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

5067. (§ 2281.) *Sealed contracts, how modified.*—A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

Gaffney M. Co. v. Hopkins, 21 Mont.
17; 52 Pac. 561.

Armington v. Stelle, 27 Mont. 17; 69
Pac. 116. A subsequent oral agreement
between the parties to a written sub-
lease of a mining claim that, in case the
sub-lessors should buy the property, the

lease would be extended, was void under
this section.

Easterly v. Jackson, 29 Mont. 502; 75
Pac. 358.

Brenneke v. Smallman, 2 C. App. 309;
83 Pac. 302.

5068. (§ 2282.) *Extinction by cancellation, etc.*—The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

5069. (§ 2283.) *Extinction by unauthorized alteration.*—The intentional destruction, cancellation, or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act.

5070. (§ 2284.) *Alteration of duplicate, not to prejudice.*—Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART III.

OBLIGATIONS IMPOSED BY LAW.

- Section 5071. Abstinence from injury.*
 “ 5072. *Fraudulent deceit.*
 “ 5073. *Deceit, what.*
 “ 5074. *Deceit upon the public, etc.*
 “ 5075. *Restoration of thing wrongfully acquired.*
 “ 5076. *When demand necessary.*
 “ 5077. *Responsibility for wilful acts, negligence, etc.*
 “ 5078. *Other obligations.*

5071. (§ 2290.) *Abstinence from injury.*—Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

Bancroft v. Bancroft, 110 Cal. 385; 42 Pac. 896.

5072. (§ 2291.) *Fraudulent deceit.*—One who wilfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

Hoffman v. Kirby, 136 Cal. 28; 68 Pac. 321.

5073. (§ 2292.) *Deceit, what.*—A deceit, within the meaning of the last section, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The assertion as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

Daley v. Quick, 99 Cal. 186; 33 Pac. 859.

5074. (§ 2293.) *Deceit upon the public, etc.*—One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

5075. (§ 2294.) *Restoration of thing wrongfully acquired.*—One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

5076. (§ 2295.) *When demand necessary.*—The restoration required by the last section must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

5077. (§ 2296.) *Responsibility for wilful acts, negligence, etc.*—Every one is responsible, not only for the result of his wilful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, wilfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

Beinhorn v. Griswold, 27 Mont. 90; Smith v. Whittier, 95 Cal. 291; 30 Pac. 559. Pac. 529.

5078. (§ 2297.) *Other obligations.*—Other obligations are prescribed by divisions one and two, of this code.

PART IV.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

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TITLE I.

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CHAPTER I.

GENERAL PROVISIONS.

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ARTICLE I.

SALE.

Section 5079. Sale, what.

“ 5080. *Subject of sale.*

5079. (§ 2310.) *Sale, what.*—Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

Borland v. Nevada Bank, 99 Cal. 93; 33 Pac. 737.

5080. (§ 2311.) *Subject of sale.*—The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

Woolley v. Wickerd, 97 Cal. 71; 31 Pac. 733.

ARTICLE II.

AGREEMENTS FOR SALE.

Section 5081. Agreement for sale.

“ 5082. *Agreement to sell.*

“ 5083. *Agreement to buy.*

“ 5084. *Agreement to sell and buy.*

“ 5085. *What may be the subject of the contract.*

“ 5086. *Agreement to sell real property.*

“ 5087. *Usual common law covenants required by such contracts, when.*

“ 5088. *Form of such covenants.*

5081. (§ 2320.) *Agreement for sale.*—An agreement for sale is either:

1. An agreement to sell.

2. An agreement to buy; or,

3. A mutual agreement to sell and buy.

5082. (§ 2321.) *Agreement to sell.*—An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

Ward Land Co. v. Mapes, 147 Cal. 749; 82 Pac. 426.

5083. (§ 2322.) *Agreement to buy.*—An agreement to buy is a contract by which one engages to accept from another, and pay a price for the title to a certain thing.

5084. (§ 2323.) *Agreement to sell and buy.*—An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor.

Adlam v. McKnight, 32 Mont. 353; 80 Pac. 615.

5085. (§ 2324.) *What may be the subject of the contract.*—Any property which, if in existence, might be the subject of sale may be the subject of an agreement for sale, whether in existence or not.

5086. (§ 2325.) *Agreement to sell real property.*—An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

Royal v. Dennison, 109 Cal. 563; 42 Pac. 39.

5087. (§ 2326.) *Usual common law covenants required by such contracts, when.*—An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of "seizin," "quiet enjoyment," "further assurance," "general warranty," and "against incumbrances."

5088. (§ 2327.) *Form of such covenants.*—The covenants mentioned in the last section must be in substance as follows: "The party of the first part covenants with the party of the second part, that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same."

ARTICLE III.

FORM OF THE CONTRACT.

Section 5089. Contract for sale of personal property.

" 5090. *Contract to manufacture.*

" 5091. *Contract for sale of real property.*

5089. (§ 2340.) *Contract for sale of personal property.*—No sale of personal property, or agreement to buy or sell it for a price of two hundred dollars or more, is valid, unless:

1. The agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

2. The buyer accepts and receives part of the thing sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

3. The buyer at the time of sale, pays a part of the price.

Slater B. Co. v. Shackleton, 30 Mont. 392; 76 Pac. 805. The receipt and acceptance of property sold need not be concurrent with the time of sale, but may occur at any time thereafter. If one who assumes the contract of the buyer accepts and receives part of the

thing sold, the sale is valid.

Brophy v. Idaho P. Co., 31 Mont. 283; 78 Pac. 493.

Ayotte v. Nadeau, 32 Mont. 519; 81 Pac. 150.

Case v. Kramer, 34 Mont. 149; 85 Pac. 879.

5090. (§ 2341.) *Contract to manufacture.*—An agreement to manufacture a thing, from materials furnished by the manufacturer, or by another person, is not within the provisions of the last section.

5091. (§ 2342.) *Contract for sale of real property.*—No agreement for the sale of real property, or of any interest therein, is valid unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent, thereunto authorized, in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

Largey v. Leggat, 30 Mont. 149; 75 Pac. 950. An oral agreement by a purchaser at a judicial sale of a lode mining claim to take the deed in his own name, and convey to another, is within this section and void.

Christiansen v. Aldrich, 30 Mont. 453;

76 Pac. 1009. A defendant who admits the making of a contract and relies on other defenses to defeat an action thereon, cannot avail himself of this section unless it is specifically pleaded.

Ayotte v. Nadeau, 32 Mont. 519; 81 Pac. 150.

ARTICLE IV.

CONDITIONAL SALES.

Section 5092. Filing contract.

“ 5093. *Duty of county recorder.*

“ 5094. *Release of obligation.*

5092. *Filing contracts.*—All contracts, notes and instruments for the transfer or sale of personal property where the title is stipulated to remain in the vendor until the payment of the purchase price, or some part thereof, shall be in writing and the original or a true copy thereof certified by the County Clerk and Recorder shall be filed with the county clerk and recorder of the county wherein the property is situate, otherwise any such contract, note or instrument is void as to a purchaser or mortgagee of such property prior to such filing. [Act approved March 3rd, 1899, § 1.] (6th Sess. 124.)

5093. *Duty of county recorder.*—The County Clerk and Recorder shall keep an index record of all such contracts, notes or instruments, filed in his office and shall note the payment and satisfaction thereof upon the request of the vendor, or his duly authorized agent or attorney. A fee of fifty (50) cents shall be paid for every such instrument filed. [Act approved March 3rd, 1899, § 2.] (6th Sess. 124.)

5094. *Release of obligation.*—Upon receipt of the purchase price the vendor shall cause the clerk and recorder to enter satisfaction and discharge the obligations of such contract, note or instrument, and a failure for thirty (30) days to cause such satisfaction to be made shall render the vendor liable for any actual damage sustained by any person by reason thereof. [Act approved March 3rd, 1899, § 3.] (6th Sess. 124-125.)

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE. I. RIGHTS AND DUTIES BEFORE DELIVERY.

II. DELIVERY.

III. WARRANTY.

ARTICLE I.

RIGHTS AND DUTIES BEFORE DELIVERY.

Section 5095. When a seller must act as depositary.

“ 5096. *When seller may re-sell.*

5095. (§ 2350.) *When a seller must act as depositary.*—After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

5096. (§ 2351.) *When seller may re-sell.*—If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price, in the manner prescribed by the title on liens.

Rayfield v. Van Meter, 120 Cal. 419; 52 Pac. 666.

ARTICLE II.

DELIVERY.

Section 5097. Delivery on demand.

“ 5098. *Delivery, where made.*

“ 5099. *Expense of transportation.*

“ 5100. *Notice of election as to delivery.*

“ 5101. *Buyer's directions as to manner of sending thing sold.*

“ 5102. *Delivery to be within reasonable hours.*

5097. (§ 2360.) *Delivery on demand.*—One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

Gardiner v. McDonogh, 147 Cal. 319; 81 Pac. 964.

5098. (§ 2361.) *Delivery, where made.*—Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or if it is not then in existence, it is deliverable at the place where it is produced.

Gardiner v. McDonogh, 147 Cal. 319; 81 Pac. 964.

5099. (§ 2362.) *Expense of transportation.*—One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

5100. (§ 2363.) *Notice of election as to delivery.*—When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice, and if he does not give such notice within a reasonable time, his right of option is waived.

5101. (§ 2364.) *Buyer's directions as to manner of sending thing sold.*—If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

5102. (§ 2365.) *Delivery to be within reasonable hours.*—The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.

WARRANTY.

Section 5103. Warranty, what.

- “ 5104. *No implied warranty in mere contract of sale.*
- “ 5105. *Warranty of title to personal property.*
- “ 5106. *Warranty on sale by sample.*
- “ 5107. *When seller knows that buyer relies on his statements, etc.*
- “ 5108. *Merchandise not in existence.*
- “ 5109. *Manufacturer's warranty against latent defects.*
- “ 5110. *Thing bought for particular purpose.*
- “ 5111. *When thing cannot be examined by buyer.*
- “ 5112. *Trade marks.*
- “ 5113. *Other marks.*
- “ 5114. *Warranty on sale of written instrument.*
- “ 5115. *Warranty of provisions for domestic use.*
- “ 5116. *Warranty on sale of good will.*
- “ 5117. *Warranty upon judicial sale.*
- “ 5118. *Effect of general warranty.*

5103. (§ 2370.) *Warranty, what.*—A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future.

5104. (§ 2371.) *No implied warranty in mere contract of sale.*—Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

Browning v. McNear, 145 Cal. 280; 78 Pac. 722.

5105. (§ 2372.) *Warranty of title to personal property.*—One who sells or agrees to sell personal property as his own, thereby warrants that he has a good and unincumbered title thereto.

Pincus v. Muntzer, 34 Mont. 501; 87 Pac. 613. An indorsement on a bill of sale by the buyer of personal property on a resale thereof that he would "guarantee delivery of same" does not constitute a warranty of title.
Jeffers v. Easton Co., 113 Cal. 353; 45 Pac. 680.

5106. (§ 2373.) *Warranty on sale by sample.*—One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

Browning v. McNear, 145 Cal. 278; 78 Pac. 722.

5107. (§ 2374.) *When seller knows that buyer relies on his statements, etc.*—One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy.

5108. (§ 2375.) *Merchandise not in existence.*—One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care.

5109. (§ 2376.) *Manufacturer's warranty against latent defects.*—One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

Snyder v. Holt Co., 134 Cal. 328; 66 Pac. 311.

5110. (§ 2377.) *Thing bought for particular purpose.*—One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

Snyder v. Holt Co., 134 Cal. 328; 66 Pac. 311.

5111. (§ 2378.) *When thing cannot be examined by buyer.*—One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

Browning v. McNear, 145 Cal. 280; 78 Pac. 722.

5112. (§ 2379.) *Trade marks.*—One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that trade mark to be genuine and lawfully used.

5113. (§ 2380.) *Other marks.*—One who sells or agrees to sell any article to which there is affixed or attached a statement

or mark to express the quantity or quality thereof, or the place where it was, in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

5114. (§ 2381.) *Warranty on sale of written instrument.*—One who sells or agrees to sell an instrument purporting to bind any one to the performance of any act, thereby warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations, or its invalidity for any cause.

Crocker Bank v. Nevada Bank, 139 Cal. 585; 73 Pac. 456.

5115. (§ 2382.) *Warranty of provisions for domestic use.*—One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, that they are sound and wholesome.

5116. (§ 2383.) *Warranty on sale of good will.*—One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

Merchants Co. v. Sterling, 124 Cal. 432; 57 Pac. 468.

5117. (§ 2384.) *Warranty upon judicial sale.*—Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

5118. (§ 2385.) *Effect of general warranty.*—A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

Section 5119. Price, when to be paid.

“ 5120. *Right to inspect goods.*

“ 5121. *Rights in case of breach of warranty.*

5119. (§ 2400.) *Price, when to be paid.*—A buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it.

5120. (§ 2401.) *Right to inspect goods.*—On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and may rescind the contract if the seller refuses to permit him to do so.

5121. (§ 2402.) *Rights in case of breach of warranty.*—The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

- Section 5122. Sale by auction, what.*
“ 5123. *Sale, when complete.*
“ 5124. *Withdrawal of bid.*
“ 5125. *Sale under written conditions.*
“ 5126. *Rights of buyer upon sale without reserve.*
“ 5127. *By bidding.*
“ 5128. *Auctioneer's memorandum of sale.*

5122. (§ 2410.) *Sale by auction, what.*—A sale by auction is a sale by public outcry to the highest bidder on the spot.

5123. (§ 2411.) *Sale, when complete.*—A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

5124. (§ 2412.) *Withdrawal of bid.*—Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

5125. (§ 2413.) *Sale under written conditions.*—When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own protection.

5126. (§ 2414.) *Rights of buyer upon sale without reserve.*—If, at a sale by auction, the auctioneer, having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and, upon such a sale, bids by the seller, or any agent for him, are void.

5127. (§ 2415.) *By bidding.*—The employment by a seller of any person to bid at a sale by auction, without the knowledge of the buyer, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

5128. (§ 2416.) *Auctioneer's memorandum of sale.*—When property is sold by auction, an entry made by the auctioneer, in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

Section 5129. Exchange, what.

“ *5130. Form of contract.*

“ *5131. Parties have rights and obligations of sellers and buyers.*

“ *5132. Warranty of money.*

5129. (§ 2430.) *Exchange, what.*—Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

5130. (§ 2431.) *Form of contract.*—The provisions of § 5089 (2340) apply to all exchanges in which the value of the thing is to be given by either party is two hundred dollars or more.

5131. (§ 2432.) *Parties have rights and obligations of sellers and buyers.*—The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

5132. (§ 2433.) *Warranty of money.*—On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I. DEPOSIT IN GENERAL.

II. DEPOSIT FOR KEEPING.

III. DEPOSIT FOR EXCHANGE.

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I. NATURE AND CREATION OF DEPOSIT.

II. OBLIGATIONS OF THE DEPOSITARY.

ARTICLE I.

NATURE AND CREATION OF DEPOSIT.

Section 5133. Deposit, kinds of.

“ *5134. Voluntary deposit, how made.*

“ *5135. Involuntary deposit, how made.*

“ *5136. Same.*

“ *5137. Deposit for keeping, what.*

“ *5138. Deposit for exchange, what.*

5133. (§ 2440.) *Deposit, kinds of.*—A deposit may be voluntary or involuntary; and for safe keeping, or for exchange.

5134. (§ 2441.) *Voluntary deposit, how made.*—A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving, the depositary.

5135. (§ 2442.) *Involuntary deposit, how made.*—An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of the owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

5136. (§ 2443.) *Same.*—The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it, if able to do so.

5137. (§ 2444.) *Deposit for keeping, what.*—A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

5138. (§ 2445.) *Deposit for exchange, what.*—A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.

OBLIGATIONS OF THE DEPOSITARY.

Section 5139. Depositary must deliver on demand.

" 5140. *No obligation to deliver without demand.*

" 5141. *Place of delivery.*

" 5142. *Notice to owner of adverse claim.*

" 5143. *Notice to owner of thing wrongfully detained.*

" 5144. *Delivery of thing owned jointly, etc.*

5139. (§ 2450.) *Depositary must deliver on demand.*—A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by § 5142 (2453).

Shropshire v. Sidebottom, 30 Mont. 408; 76 Pac. 942. In the absence of a special contract with reference to the bailment, ordinary care only is required of a bailee for hire. In an action

against a bailee for hire for failure to deliver two horses, as agreed, the bailee must show that he used ordinary care.

Barrere v. Soms, 113 Cal. 102; 45 Pac. 177.

5140. (§ 2451.) *No obligation to deliver without demand.*—A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

Stadler v. First N. Bank, 22 Mont. 216; 56 Pac. 119. A contract is implied that when the thing deposited is money, an equivalent sum of money shall

be paid to the depositor upon demand therefor.

Barrere v. Soms, 113 Cal. 102; 45 Pac. 177.

5141. (§ 2452.) *Place of delivery.*—A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

5142. (§ 2453.) *Notice of owner of adverse claim.*—A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

5143. (§ 2454.) *Notice to owner of thing wrongfully detained.*—A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

5144. (§ 2455.) *Delivery of thing owned jointly, etc.*—If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I. GENERAL PROVISIONS.

II. GRATUITOUS DEPOSIT.

III. STORAGE.

IV. INNKEEPERS.

V. FINDING.

ARTICLE I.

GENERAL PROVISIONS.

Section 5145. Depositor must indemnify depositary.

“ 5146. *Obligation of depositary of animals.*

“ 5147. *Obligations as to use of thing deposited.*

“ 5148. *Liability for damage arising from wrongful use.*

“ 5149. *Sale of thing in danger of perishing.*

“ 5150. *Injury to, or loss of thing deposited.*

“ 5151. *Service rendered by depositary.*

“ 5152. *Extent of his liability for negligence.*

5145. (§ 2460.) *Depositor must indemnify depositary.*—A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

5146. (§ 2461.) *Obligation of depositary of animals.*—A depositary of living animals must provide them with suitable food and shelter and treat them kindly.

5147. (§ 2462.) *Obligations as to use of thing deposited.*—A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

5148. (§ 2463.) *Liability for damage arising from wrongful use.*—A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

5149. (§ 2464.) *Sale of thing in danger of perishing.*—If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

5150. (§ 2465.) *Injury to, or loss of thing deposited.*—If a thing is lost during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or wilfully misrepresents the circumstances to him, the depositary is presumed to have wilfully, or by gross negligence, permitted the loss or injury to occur.

5151. (§ 2466.) *Service rendered by depositary.*—So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

5152. (§ 2467.) *Extent of his liability for negligence.*—The liability of a depositary for negligence can not exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

Cussen v. Southern Bank, 133 Cal. 538; 65 Pac. 1099.

ARTICLE II.

GRATUITOUS DEPOSIT.

Section 5153. Gratuitous deposit, what.

“ 5154. *Nature of involuntary deposit.*

“ 5155. *Degree of care required of gratuitous depositary.*

“ 5156. *His duties cease, when.*

5153. (§ 2480.) *Gratuitous deposit what.*—Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

5154. (§ 2481.) *Nature of involuntary deposit.*—An involuntary deposit is gratuitous, the depositary being entitled to no reward.

5155. (§ 2482.) *Degree of care required of gratuitous depositary.*—A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

5156. (§ 2483.) *His duties cease, when.*—The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of § 5135 (2442) cannot give such notice until the emergency which gave rise to the deposit is past.

ARTICLE III.

STORAGE.

Section 5157. *Deposit for hire.*

“ 5158. *Degree of care required of depositary for hire.*

“ 5159. *Rate of compensation for fraction of a week, etc.*

“ 5160. *Termination of deposit.*

“ 5161. *Same.*

“ 5162. *Sale to pay costs of storage.*

“ 5163. *Application of proceeds of sale.*

5157. (§ 2490.) *Deposit for hire.*—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

5158. (§ 2491.) *Degree of care required of depositary for hire.*—A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

Shropshire v. Sidebottom, 30 Mont. 408; 76 Pac. 942. There is not necessarily any conflict between this section and section 2450 *supra*. The rule that a bailee for hire is charged only with ordinary care has not been changed.

5159. (§ 2492.) *Rate of compensation for fraction of a week, etc.*—In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

5160. (§ 2493.) *Termination of deposit.*—In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon a reasonable notice.

5161. (§ 2494.) *Same.*—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

5162. *Sale to pay costs of storage.*—Any storage or commission merchant receiving personal property from any person for storage and any common carrier of goods by whom any personal property is lawfully stored before or after the transportation thereof, may, after keeping the same in store for ninety days, in default of the payment of the storage or freight money on such personal property, advertise and sell the same at public auction, to the highest bidder, for cash, first giving notice of the time, the terms, and place of sale, and a description of the property to be sold, by publication in some newspaper published in the county where the property may be stored. Said notice shall be published at least once a week for four weeks next previous to the day of sale, and shall specify the amount due on the property to be sold. When a specified time has been agreed upon between the parties for the storage of said property, the same shall not be advertised until the expiration of the time agreed upon. Should there be no newspaper published in the county where such property is stored, then notice may be given in the newspaper published nearest thereto, in some other county, in this State. But no more of such property shall be sold than is necessary to pay the charges due, together with the costs. [Act approved February 25th, 1901, § 1.] (7th Sess. 153.)

5163. *Application of proceeds of sale.*—After paying the expenses of sale, including the publication of notice, the storage or commission merchant, or the carrier, shall be authorized, out of the proceeds arising from the sale of the property, to retain the amount due him for storage or freight money, or both, due upon any such property, and the excess, if any, must be paid over to the person entitled to the proceeds thereof. All sales under this Article shall vest the title to the property sold in the purchaser thereof. [Act approved February 25th, 1901, § 2.] (7th Sess. 153-4.)

ARTICLE IV.

INNKEEPERS.

Section 5164. *Innkeepers' liability.*

“ 5165. *How exempted from liability.*

“ 5166. *Lien of hotel, boarding house and lodging house keepers.*

“ 5167. *Sale of baggage by boarding or lodging house keepers.*

“ 5168. *How exempted from liability.*

“ 5169. *Fire escapes for hotels.*

Section 5170. Inspection of hotels, inns and lodging houses.

“ 5171. *Penalty.*

“ 5172. *Limitation of innkeepers' liability.*

“ 5173. *Liable for negligence.*

“ 5174. *Not liable without negligence.*

“ 5175. *Enforcement of lien.*

“ 5176. *Notice of sale.*

“ 5177. *Defrauding innkeeper, penalty.*

5164. (§ 2500.) *Innkeeper's liability.*—An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn.

Fay v. Pacific Co., 93 Cal. 261; 26 Pac. 1099.

5165. (§ 2501.) *How exempted from liability.*—If an innkeeper keeps a fireproof safe, and gives notice to a guest, either personally or by putting up a printed notice in a prominent place in the room occupied by the guest, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable, except so far as his own acts contribute thereto, for any loss of, or injury to, such articles, if not deposited with him, and not required by the guest for present use.

5166. *Lien of hotel, boarding house and lodging house keepers.*—Hotel men, boarding house and lodging house keepers shall have a lien upon the baggage and other property of value brought into such hotel, inn or boarding or lodging house, by such guest or boarder or lodger, for their accommodation, board or lodging and room rent and such extras as are furnished at their request, with the right of the possession of such baggage or other property of value, until all such charges are paid. *Provided, however,* that nothing herein contained shall be construed to give a lien upon property sold on the installment plan and title to which is to remain in the vendor until final payment. [Act approved February 16th, 1899.] (6th Sess. 132.)

5167. (§ 2503.) *Sale of baggage by boarding or lodging house keepers.*—Whenever any trunk, carpet bag, valise, box, bundle or other baggage, has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, as such, and has remained, or shall remain, unclaimed for the period of six months, such keeper may proceed to sell the same at public auction, and out of the proceeds of such sale, may retain the charges for storage, if any, and the expense of advertising and sale thereof; but no such sale shall be made until the expiration of four weeks from the first publication of notice of such sale in a newspaper published in or nearest the city, town, or place in which said hotel, inn, boarding or lodging house is situated. Said notice

shall be published once a week for four successive weeks, in some newspaper, daily or weekly, of general circulation, and shall contain a description of each trunk, carpet bag, valise, box, bundle, or other baggage, as near as may be; the name of the owner, if known; the name of said keeper and the time and place of sale; and the expenses incurred for advertising shall be a lien upon such trunk, carpet bag, valise, box, bundle, or other baggage, in a ratable proportion, according to the value of such piece of property, or thing, or article sold; and in case any balance arising from such sale shall not be claimed by the rightful owner within one week from the day of said sale, the same shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county.

5168. (§ 2504.) *How exempted from liability.*—Whenever the proprietor or proprietors of any hotel or inn shall provide a safe or other secure place of deposit therein for the safe keeping of any money, jewels, ornaments or other articles of value, belonging to any guest or guests of such hotel or inn, and shall cause to be posted and maintained printed notices thereof in the office or public room, and within every guest's room of such inn or hotel, the proprietor or proprietors thereof shall not be liable to any such guest or guests who shall neglect to deliver their money, jewels, ornaments, or other articles of value to the proprietor or other person in charge of such safe or place of deposit for deposit and safe keeping therein for any loss of such money or other articles which may be sustained by such guest by theft or otherwise. [*Act approved Feb'y. 26, 1895.*]

5169. *Fire escapes for hotels.*—Every owner, lessee, proprietor or manager of a hotel, inn or lodging house situated in the State of Montana, shall place or cause to be placed and maintained, or cause to be maintained, a rope or better appliance, to be used as a fire escape, in each and every room of such hotel, inn or lodging house used as a lodging room, except the rooms on the ground floor, which rope or other better appliance shall be securely fastened within the room to a suitable iron hook or ring, which rope shall be at all times kept coiled up and exposed to plain view of any occupant of said room, the coil to be fastened in such manner as to be easily and quickly loosened and uncoiled, and such rope shall be of sufficient length to reach from the window of such room to the ground, and, with its fastenings, shall be of sufficient strength to sustain a weight of four hundred pounds. It shall also be the duty of every such owner, lessee, proprietor or manager to post, or cause to be posted and maintained in a conspicuous place in each lodging room, and each hall of such hotel inn or lodging house, except the rooms and hall on the ground

floor thereof, a printed notice to the effect that such rope or better appliance is so placed in every such room thereof for use in case of fire, and giving full instructions for such use. [*Act approved February 28, 1907, § 2.*] (*10th Sess. Chap. 53.*)

5170. *Inspection of hotels, inns and lodging houses.*—It shall be the duty of the fire marshal, or the chief officer of the fire department of every city and town in this state in the months of July and January of each and every year, and at such other times as the said officer may deem necessary, to inspect, or cause to be inspected by some person from said fire department, to be deputized by him for that purpose, every guest's room of every hotel, inn or lodging house in the city or town in which he is performing the duties of such officer, and ascertain whether the provisions of § 5169 (2505) of this Code have been complied with. It shall be the duty of the sheriff of each county in this State in the months of July and January of each and every year, and such other times as the said sheriff shall deem necessary to inspect or cause to be inspected by some person from his department to be deputized by him for that purpose, every lodging room of every hotel, inn or lodging house in his county and situated outside the corporate limits of any city or town, and ascertain whether the provisions of § 5169 (2505) of the Civil Code of the State of Montana have been complied with. Any owner, lessee, proprietor, manager or other person who shall obstruct or prevent such officer or person from making a free inspection of such room, provided for as aforesaid, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding one hundred dollars, or imprisoned for a term not exceeding three months, in the discretion of the court. It shall be the duty of every sheriff and of every other officer making such inspection on or before the fifteenth day of August and February of each and every year, to make and file a written report to the County Attorney of his county, showing what hotels, inns and lodging houses he has so inspected, and specifying which of them have not fully complied with the provisions of this Act, and to what extent and in what respects they have not so complied. Such County Attorney shall thereupon and within ten days after such report is so rendered to him, file or cause to be filed, before any court or magistrate having jurisdiction of crimes of the grade of misdemeanor, a complaint charging such owner, proprietor, lessee or manager, or other person maintaining such hotel, inn, or lodging house with a violation of § 5169 (2505) of the Civil Code of the State of Montana, and shall procure a warrant and cause to be arrested every person so found violating the provisions of this Act. [*Act approved February 28, 1907.*] (*10th Sess. Chap. 53.*)

5171. (§ 2507.) *Penalty.*—Any person or officer violating the provisions of this act shall be deemed guilty of a misde-

meanor, and upon conviction thereof shall be punished by imprisonment in the county jail not to exceed ninety days, or by a fine of not more than one hundred dollars, and costs, or both such fine and imprisonment. [*Act approved Feby. 26, 1895.*]

5172. (§ 2508.) *Limitation of innkeeper's liability.*—No innkeeper shall be liable for the loss or destruction by fire of the property received by him from a guest, stored or being, with the knowledge of such guest, in a barn or other out-building, where it shall appear that such loss or destruction is the work of an incendiary, and occurred without the fault or negligence of such innkeeper or his servants. [*Act approved Feby. 26, 1895.*]

5173. (§ 2509.) *Liable for negligence.*—All inn or hotel keepers contemplated in this act, shall be liable for the loss of, or damage to, any baggage or other property of the guests of any hotel or inn by fire, in every case where such is the result of the negligence of the keeper, or his servants. [*Act approved Feby. 26, 1895.*]

5174. (§ 2510.) *Not liable without negligence.*—No hotel or innkeeper shall be liable to any guest for the loss of wearing apparel, goods or personal effects where it shall appear that such loss occurred without the fault or negligence of such hotel keeper or his employes. [*Act approved Feby. 26, 1895.*]

5175. (§ 2512.) *Enforcement of lien.*—Any hotel or innkeeper who shall have a lien upon any of the goods, baggage or other chattel property of his guests may, at the expiration of six months from the date of the departure of such guest from such hotel or inn, sell and dispose of the same at public auction and to the highest bidder for cash, or so much thereof as may be necessary to pay the sum due such hotel or innkeeper, together with the cost of storage, advertisement and sale. [*Act approved Feby. 26, 1895.*]

5176. (§ 2513.) *Notice of sale.*—Before proceeding to the sale of the property of any guest, as provided in § 5175 (2512) of this act, such hotel or innkeeper shall cause a notice of such sale, containing a description of the property to be sold, and the time and place where such property will be sold, to be published once each week for two successive weeks in a newspaper published in the city or town in which such hotel or inn is situated; but if there be none, then in some newspaper published nearest such town or city, and in case any balance arising from such sale shall not be claimed by the rightful owner within thirty days from the day of such sale, the same shall be paid into the treasury of the county in which such sale took place; and if such balance be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the school fund of such county. [*Act approved Feby. 26, 1895.*]

5177. (§ 2514.) *Defrauding innkeeper, penalty.*—Any person who shall put up at any inn or hotel, and who shall (except where

credit is given by express agreement) procure any food, entertainment, or accommodation without paying therefor, and with intent to cheat and defraud the owner or keeper thereof out of his pay for the same, or who, with intent to cheat and defraud such owner or keeper out of the pay thereof, shall obtain credit at any hotel or inn for such food, entertainment, or accommodation by means of any false show of baggage or effects brought thereto, or shall with such intent remove, or cause to be removed, any baggage or effects from any hotel or inn, where there is a lien existing thereon for the proper charges due from such guest for fare and board furnished therein, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not exceeding three months, or by a fine not exceeding one hundred dollars, and costs, or both such fine and imprisonment. [*Act approved Feby. 26, 1895.*]

ARTICLE V.

FINDING.

Section 5178. Obligation of finder.

“ 5179. *Finder to notify owner.*

“ 5180. *Claimant to prove ownership.*

“ 5181. *Reward, etc., to finder.*

“ 5182. *Finder may put thing found on storage.*

“ 5183. *When finder may sell the thing found.*

“ 5184. *How sale is to be made.*

“ 5185. *Surrender of thing to the finder.*

“ 5186. *Thing abandoned.*

5178. (§ 2520.) *Obligation of finder.*—One who finds a thing lost is not bound to take charge of it, but if he does so, he is thenceforth a depositary for the owner, with the rights and obligations of a depositary for hire.

5179. (§ 2521.) *Finder to notify owner.*—If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

5180. (§ 2522.) *Claimant to prove ownership.*—The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

5181. (§ 2523.) *Reward, etc., to finder.*—The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

5182. (§ 2524.) *Finder may put thing found on storage.*—The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

5183. (§ 2525.) *When finder may sell the thing found.*—The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot, with reasonable diligence, be found, or being found, refuses, upon demand, to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two-thirds of its value.

5184. (§ 2526.) *How sale is to be made.*—A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

5185. (§ 2527.) *Surrender of thing to the finder.*—The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

5186. (§ 2528.) *Thing abandoned.*—The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

5187. (§ 2540.) A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

Stadler v. First N. Bank, 22 Mont. 216; 56 Pac. 119. By a deposit, not special, in a bank, the money becomes the property of the bank and the relation of debtor and creditor is created.

TITLE IV.

LOAN.

CHAPTER I. LOAN FOR USE.

II. LOAN FOR EXCHANGE.

III. LOAN FOR MONEY.

CHAPTER I.

LOAN FOR USE.

Section 5188. Loan, what.

“ 5189. *Title to property lent.*

“ 5190. *Care required of borrower.*

“ 5191. *Same.*

“ 5192. *Degree of skill.*

“ 5193. *Borrower, when to repair injuries.*

Section 5194. Use of thing lent.

“ 5195. *Relending forbidden.*

“ 5196. *Borrower, when to bear expenses.*

“ 5197. *Lender liable for defects.*

“ 5198. *Lender may require return of things lent.*

“ 5199. *When returnable without demand.*

“ 5200. *Place of return.*

5188. (§ 2550.) *Loan, what.*—A loan for use is a contract by which one gives to another the temporary use and possession of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

5189. (§ 2551.) *Title to property lent.*—A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

5190. (§ 2552.) *Care required of borrower.*—A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

5191. (§ 2553.) *Same.*—One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

5192. (§ 2554.) *Degree of skill.*—A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

5193. (§ 2555.) *Borrower, when to repair injuries.*—A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

5194. (§ 2556.) *Use of thing lent.*—The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

5195. (§ 2557.) *Relending forbidden.*—The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

5196. (§ 2558.) *Borrower, when to bear expenses.*—The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

5197. (§ 2559.) *Lender liable for defects.*—The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

5198. (§ 2560.) *Lender may require return of things lent.*—The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such

arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

5199. (§ 2561.) *When returnable without demand.*—If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

5200. (§ 2562.) *Place of return.*—The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

Section 5201. Loan for exchange, what.

“ 5202. *Same.*

“ 5203. *Title to property lent.*

“ 5204. *Contract cannot be modified by lender.*

“ 5205. *Certain sections applicable.*

5201. (§ 2570.) *Loan for exchange, what.*—A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

5202. (§ 2571.) *Same.*—A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all of the provisions of this chapter.

5203. (§ 2572.) *Title to property lent.*—By a loan for exchange, the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

5204. (§ 2573.) *Contract cannot be modified by lender.*—A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

5205. (§ 2574.) *Certain sections applicable.*—Sections 5197 (2559), 5198 (2560) and 5199 (2561), apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

- Section 5206. Loan of money.*
 “ 5207. *Loan to be repaid in current money.*
 “ 5208. *Loan presumed to be on interest.*
 “ 5209. *Interest, what.*
 “ 5210. *Annual rate.*
 “ 5211. *Legal interest.*
 “ 5212. *Same.*
 “ 5213. *Interest becomes part of principal, when.*
 “ 5214. *Interest on judgment.*

5206. (§ 2580.) *Loan of money.*—A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

5207. (§ 2581.) *Loan to be repaid in current money.*—A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

5208. (§ 2582.) *Loan presumed to be on interest.*—When-ever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

Wells Co. v. Enright, 127 Cal. 675; 60 Pac. 439.

5209. (§ 2583.) *Interest, what.*—Interest is the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money.

Columbia Bank v. Los Angeles, 137 Cal. 469; 70 Pac. 308.

5210. (§ 2584.) *Annual rate.*—When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

5211. *Interest. Contracts.*—Unless there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of eight per cent (8%) per annum, after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year. [Act approved February 28th. 1899.] (6th Sess. 125.)

Stanford v. Coram, 28 Mont. 291; 72 Pac. 655. Interest is recoverable on an open account from demand and the institution of suit is a demand. A judgment

rendered prior to the passage of this Act bore interest at the rate of ten per centum per annum and eight per cent thereafter.

5212. (§ 2586.) *Same.*—Parties may agree in writing for the payment of any rate of interest, and it shall be allowed, according to the terms of the agreement, until the entry of judgment.

Yndart v. Den, 116 Cal. 538; 48 Pac. 618.

5213. (§ 2587.) *Interest becomes part of principal, when.*—The parties may, in any contract in writing whereby any debt is secured to be paid, agree that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Stanford v. Coram, 26 Mont. 294; 67 Pac. 1008. This section does not affect notes or agreements made before its adoption in 1895, when there was no statute

on the subject of usury, and parties were at liberty to fix the rate of interest.

Yndart v. Den, 116 Cal. 536; 48 Pac. 618.

5214. *Interest. Judgment.*—Interest is payable on judgments recovered in the Courts of this State, at the rate of eight per cent (8%) per annum, and no greater rate, but such interest must not be compounded in any manner or form. [Act approved February 28, 1899.] (6th Sess. 125.)

TITLE V.

HIRING.

CHAPTER I. HIRING IN GENERAL.

II. HIRING OF REAL PROPERTY.

III. HIRING OF PERSONAL PROPERTY.

CHAPTER I.

HIRING IN GENERAL.

Section 5215. *Hiring, what.*

“ 5216. *Products of thing.*

“ 5217. *Quiet possession.*

“ 5218. *Degree of care, etc., on part of hirer.*

“ 5219. *Must repair injuries, etc.*

“ 5220. *Thing let for a particular purpose.*

“ 5221. *When letter may terminate the hiring.*

“ 5222. *When hirer may terminate the hiring.*

“ 5223. *When hiring terminates.*

“ 5224. *When terminated by death, etc., of party.*

“ 5225. *Apportionment of hire.*

5215. (§ 2600.) *Hiring, what.*—Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

5216. (§ 2601.) *Products of thing.*—The products of a thing hired, during the hiring, belong to the hirer.

Frank v. Symons, 35 Mont. 62; 88 Pa. c. 561.

5217. (§ 2602.) *Quiet possession.*—An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

McDowell v. Hyman, 117 Cal. 70; 48 Pac. 984.

5218. (§ 2603.) *Degree of care, etc., on part of hirer.*—The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

5219. (§ 2604.) *Must repair injuries, etc.*—The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

5220. (§ 2605.) *Things let for a particular purpose.*—When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use in all events, or may treat the contract as thereby rescinded.

Isom v. Rex Oil Co., 147 Cal. 661; 82 Pac. 317.

5221. (§ 2606.) *When letter may terminate the hiring.*—The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,
2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

5222. (§ 2607.) *When hirer may terminate the hiring.*—The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,
2. When the greater part of the thing hired; or that part which was and which the letter had at the time of the hiring, reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

5223. (§ 2608.) *When hiring terminates.*—The hiring of a thing terminates:

1. At the end of the term agreed upon.
2. By the mutual consent of the parties.
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,
4. By the destruction of the thing hired.

McKissick v. Ashby, 98 Cal. 425; 33 Pac. 729.

5224. (§ 2609.) *When terminated by death, etc., of party.*—If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

5225. (§ 2610.) *Apportionment of hire.*—When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

Section 5226. Lessor to make dwelling house fit for its purpose.

“ 5227. *When lessee may make repairs, etc.*

“ 5228. *Term of hiring when no limit is fixed.*

“ 5229. *Hiring of lodgings for indefinite term.*

“ 5230. *Renewal of lease by lessee's continued possession.*

“ 5231. *Notice to quit.*

“ 5232. *Rent, when payable.*

“ 5233. *Attornment of a tenant to a stranger.*

“ 5234. *Tenant must deliver notice served on him.*

“ 5235. *Letting parts of rooms forbidden.*

5226. (§ 2620.) *Lessor to make dwelling house fit for its purpose.*—The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable, except such as are mentioned in § 5219 (2604).

Landt v. Schneider, 31 Mont. 18; 77 Pac. 308. Sections 2620 and 2621 of this code do not apply to business property,

but are confined to property used for dwelling house purposes. Gately v. Campbell, 124 Cal. 522; 57 Pac. 567.

5227. (§ 2621.) *When lessee may make repairs, etc.*—If within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, where the costs of such repairs do not require an expenditure greater than one month's rent of the premises, and deduct the expenses of such repairs from the rent, or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

Landt v. Schneider, 31 Mont. 18; 77 Pac. 308. Gately v. Campbell, 124 Cal. 523; 57 Pac. 567.

5228. (§ 2622.) *Term of hiring when no limit is fixed.*—A hiring of real property, other than lodgings and dwelling houses,

in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

Brill v. Carsley, 2 C. App. 333; 84 Pac 57.

5229. (§ 2623.) *Hiring of lodgings for indefinite term.*—A hiring of lodgings or a dwelling house for an unspecified time is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

5230. (§ 2624.) *Renewal of lease by lessee's continued possession.*—If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month, when the rent is payable monthly, nor in any case one year.

Brill v. Carsley, 2 C. App. 333; 84 Pac 57.

5231. (§ 2625.) *Notice to quit.*—A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

Owen v. Herzikoff, 2 C. App. 623; 84 Pac. 274.

5232. (§ 2626.) *Rent, when payable.*—When there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

5233. (§ 2627.) *Attornment of a tenant to a stranger.*—The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

5234. (§ 2628.) *Tenant must deliver notice served on him.*—Every tenant who receives notice of any proceedings to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

5235. (§ 2629.) *Letting parts of rooms forbidden.*—One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary, and if a

landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obligation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

- Section 5236. Obligations of letter of personal property.*
 “ 5237. *Ordinary expenses.*
 “ 5238. *Extraordinary expenses.*
 “ 5239. *Return of thing hired.*
 “ 5240. *Charter party, what.*

5236. (§ 2640.) *Obligations of letter of personal property.*—One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

5237. (§ 2641.) *Ordinary expenses.*—A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

5238. (§ 2642.) *Extraordinary expenses.*—If a letter fails to fulfill his obligations, as prescribed by § 5236 (2640), the hirer after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

5239. (§ 2643.) *Return of the thing hired.*—At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

5240. (§ 2644.) *Charter party, what.*—The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, and continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

TITLE VI.

SERVICE.

- CHAPTER I. SERVICE WITH EMPLOYMENT.
 II. PARTICULAR EMPLOYMENTS.
 III. SERVICE WITHOUT EMPLOYMENT.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

- ARTICLE I. DEFINITION OF EMPLOYMENT.
 II. OBLIGATIONS OF THE EMPLOYER.
 III. OBLIGATIONS OF EMPLOYEE.
 IV. TERMINATION OF EMPLOYMENT.

ARTICLE I.

DEFINITION OF EMPLOYMENT.

5241. (§ 2650.) The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer or of a third person.

White v. Alameda, 124 Cal. 98; 56 Pac. 795.

ARTICLE II.

OBLIGATIONS OF THE EMPLOYER.

- Section 5242. *When employer must indemnify employe.*
 “ 5243. *When not.*
 “ 5244. *Employer to indemnify for his own negligence.*
 “ 5245. *Railway corporation. Vice principals.*
 “ 5246. *Mines, mills and smelters. Vice principals.*
 “ 5247. *Contract of insurance not to relieve employer.*
 “ 5248. *Mining companies liable for negligence of certain employes.*
 “ 5249. *Contract of insurance no bar to recovery.*
 “ 5250. *Survival of action.*
 “ 5251. *Railway corporations liable for negligence of fellow servant.*
 “ 5252. *Survival of action.*

5242. (§ 2660.) *When employer must indemnify employe.—*
 An employer must indemnify his employe, except as prescribed in the next section, § 5243 (2661), for all that he necessarily expends or loses in direct consequence of the discharge of his duties

as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

Coulter v. Union L. Co., 34 Mont. 605; 87 Pac. 977.

Hardesty v. Largey L. Co., 34 Mont. 161; 86 Pac. 32. Sections 2660, 2661 and 2662 are directly applicable to cases

arising between master and servant on account of personal injuries sustained by the latter in the course of his employment.

5243. (§ 2661.) *When not.*—An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

Hardesty v. Largey L. Co., 34 Mont. 161; 86 Pac. 32.

Coulter v. Union L. Co., 34 Mont. 604; 87 Pac. 977.

Leishman v. Union Works, 148 Cal. 282; 83 Pac. 30.

5244. (§ 2662.) *Employer to indemnify for his own negligence.*—An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

Coulter v. Union L. Co., 34 Mont. 600; 87 Pac. 975.

Hardesty v. Largey L. Co., 34 Mont. 161; 86 Pac. 32.

Thompson v. California C. Co., 148 Cal. 37; 82 Pac. 367.

5245. *Railway corporation. Vice principals.*—Every railway corporation including electric railway corporations, doing business in this State, shall be liable for all damages sustained by an employe thereof, within this State, without contributing negligence on his part, when such damages is caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or of any other employe who has superintendence of any stationary or hand signal. [Act approved March 5th, 1903, § 1.] (8th Sess. Chap. 83.)

Kelly v. Northern P. Co. 35 Mont. 520; 88 Pac. 1009. A servant of a railway company, who relies for recovery of damages for personal injuries upon the provisions of either of the fellow servant acts, creating a liability on the

part of the master where none existed before their enactment, must set forth in ordinary and concise language a statement of facts showing his right to recover under such special statute.

5246. *Mines, mills and smelters. Vice principals.*—That every company, corporation, or individual operating any mine, smelter or mill for the refining of ores shall be liable for all damages sustained by an employe thereof within this State, without contributing negligence on his part, when such damage is caused by the negligence of any superintendent, foreman, shift-boss, hoisting or other engineer, or crane-men. [Act approved March 5th, 1903, § 2.] (8th Sess. Chap. 83.)

5247. *Contract of insurance not to relieve employer.*—No contract of insurance, relief, benefit, or indemnity in case of injury or death, nor any other contract entered into either before or after the injury, between the person injured and any of the employers named in this Act shall constitute any bar or defense to any cause of action brought under the provisions of this Act. [Act approved March 5th, 1903, § 3.] (8th Sess. Chap. 83.)

5248. *Mining companies liable for negligence of certain employes.*—That every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores shall be liable for any damages sustained by any employes thereof within this State, without contributing negligence on his part, when such damage is caused by the negligence of any superintendent, foreman, shift-boss, hoisting, or other engineer, or crane men. [Act approved February 20, 1905, § 1.] (9th Sess. Chap. 23.)

5249. *Contract of insurance no bar to recovery.*—No contract of insurance, relief, benefit, or indemnity in case of injury or death, nor any other contract entered into before the injury, between the person injured and any of the employers named in this Act shall constitute any bar or defense to any cause of action brought under the provision of this Act. [Act approved February 20, 1905, § 2.] (9th Sess. Chap. 23.)

5250. *Survival of action.*—In case of the death of any such employes in consequence of any injury or damages so sustained, the right of action shall survive and may be prosecuted and maintained by its heirs, or personal representatives. [Act approved February 20, 1905, § 3.] (9th Sess. Chap. 23.)

5251. *Railway corporations liable for negligence of fellow servant.*—Every person or corporation operating a railway or railroad in this State shall be liable for all damages sustained by any employe of such person or corporation in consequence of the neglect of any other employe or employes thereof, or by the mismanagement of any other employe or employes thereof, and in consequence of the wilful wrongs, whether of commission or omission, of any other employe or employes thereof, when such neglect, mismanagement or wrongs, are in any manner connected with the use and operation of any railway or railroad on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding. [Act approved January 16, 1905, § 1.] (9th Sess. Chap. 1.)

Kelly v. Northern P. Co., 35 Mont. 250; 88 Pac. 1009.

5252. *Survival of action.*—In case of the death of any such employe in consequence of any injury or damage so sustained, the right of action shall survive and may be prosecuted and maintained by his heirs or personal representatives. [Act approved January 16, 1905, § 2.] (9th Sess. Chap. 1.)

ARTICLE III.

OBLIGATIONS OF THE EMPLOYEE.

Section 5253. *Duties of gratuitous employe.*

" 5254. *Same.*

" 5255. *Same.*

" 5256. *Duties of employe for reward.*

- Section 5257. Duties of employe for his own benefit.*
“ 5258. *Contracts for service limited to two years.*
“ 5259. *Employe must obey employer.*
“ 5260. *Employe must conform to usage.*
“ 5261. *Degree of skill required.*
“ 5262. *Must use what skill he has.*
“ 5263. *What belongs to employer.*
“ 5264. *Duty to account.*
“ 5265. *Employe not bound to deliver without demand.*
“ 5266. *Reference to be given to employers.*
“ 5267. *Responsibility of employe for substitute.*
“ 5268. *Responsibility for negligence.*
“ 5269. *Surviving employe.*
“ 5270. *Confidential employment.*

5253. (§ 2670.) *Duties of gratuitous employe.*—One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

5254. (§ 2671.) *Same.*—One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

5255. (§ 2672.) *Same.*—A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

5256. (§ 2673.) *Duties of employe for reward.*—One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

5257. (§ 2674.) *Duties of employe for his own benefit.*—One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

5258. (§ 2675.) *Contracts for service limited to two years.*—A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on apprentices, cannot be enforced against the employe beyond the term of two years from the commencement of service under it; but if the employe voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Stone v. Bancroft, 139 Cal. 81; 70 Pac. 1017.

5259. (§ 2676.) *Employe must obey employer.*—An employe must substantially comply with all the directions of his

employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

5260. (§ 2677.) *Employee to conform to usage.*—An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

Burns v. Sennett, 99 Cal. 371; 33 Pac. 916.

5261. (§ 2678.) *Degree of skill required.*—An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

5262. (§ 2679.) *Must use what skill he has.*—An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

5263. (§ 2680.) *What belongs to employer.*—Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

5264. (§ 2681.) *Duty to account.*—An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

5265. (§ 2682.) *Employee not bound to deliver without demand.*—An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

5266. (§ 2683.) *Reference to be given to employers.*—An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

5267. (§ 2684.) *Responsibility of employee for substitute.*—An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

5268. (§ 2685.) *Responsibility for negligence.*—An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

5269. (§ 2686.) *Surviving employee.*—Where service is to be rendered by two or more persons jointly, and one of them dies.

the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

5270. (§ 2687.) *Confidential employment.*—The obligations peculiar to confidential employments are defined in the title on trusts.

ARTICLE IV.

TERMINATION OF EMPLOYMENT.

Section 5271. Termination by death, etc., of employer.

“ 5272. *Employment, how terminated.*

“ 5273. *Continuance of service in certain cases.*

“ 5274. *Termination at will.*

“ 5275. *Termination by employer for fault.*

“ 5276. *Termination by employe for fault.*

“ 5277. *Compensation of employe dismissed for cause.*

“ 5278. *Compensation of employe leaving for cause.*

5271. (§ 2700.) *Termination by death, etc., of employer.*—Every employment in which the power of the employe is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

5272. (§ 2701.) *Employment, how terminated.*—Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe: or,
4. By his legal incapacity to act as such.

White v. Alameda, 124 Cal. 98; 56 Pac. 795.

5273. (§ 2702.) *Continuance of service in certain cases.*—An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service according to the terms of the contract of employment.

5274. (§ 2703.) *Termination at will.*—An employment having no specified term, may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

5275. (§ 2704.) *Termination by employer for fault.*—An employment, even for a specified term, may be terminated at any time by the employer, in case of any wilful breach of duty by the

employe in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

5276. (§ 2705.) *Termination by employe for fault.*—An employment, even for a specified term, may be terminated by the employe at any time, in case of any wilful or permanent breach of obligations of his employer to him as an employe.

5277. (§ 2706.) *Compensation of employe dismissed for cause.*—An employe, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

5278. (§ 2707.) *Compensation of employe leaving for cause.*—An employe who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered, bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I. MASTER AND SERVANT.

II. AGENTS.

III. FACTORS.

ARTICLE I.

MASTER AND SERVANT.

Section 5279. Servant, what.

“ 5280. *Term of hiring.*

“ 5281. *Same.*

“ 5282. *Renewal of hiring.*

“ 5283. *Time of service.*

“ 5284. *Servant to pay over without demand.*

“ 5285. *When servant may be discharged.*

5279. (§ 2720.) *Servant, what.*—A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

Hedge v. Williams, 131 Cal. 459; 63 Pac. 721.

5280. (§ 2721.) *Term of hiring.*—A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

Etchas v. Orena, 127 Cal. 592; 60 Pac. 45.

5281. (§ 2722.) *Same.*—In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

White v. Alameda, 124 Cal. 98; 56 Pac. 795.

5282. (§ 2723.) *Renewal of hiring.*—Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Gabriel v. Suisun Bank, 145 Cal. 267; 78 Pac. 736.

5283. (§ 2724.) *Time of service.*—The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

5284. (§ 2725.) *Servant to pay over without demand.*—A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person.

5285. (§ 2726.) *When servant may be discharged.*—A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of his master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.

AGENTS.

Section 5286. Agent to conform to his authority.

“ 5287. *Must keep his principal informed.*

“ 5288. *Collecting agent.*

“ 5289. *Responsibility of sub-agent.*

5286. (§ 2740.) *Agent to conform to his authority.*—An agent must not exceed the limits of his actual authority, as defined by the title on agency.

5287. (§ 2741.) *Must keep his principal informed.*—An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

5288. (§ 2742.) *Collecting agent.*—An agent employed to collect a negotiable instrument must collect it promptly, and take

all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

5289. (§ 2743.) *Responsibility of sub-agent.*—A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.

FACTORS.

Section 5290. Factor, what.

“ 5291. *Obedience required from factor.*

“ 5292. *Sales on credit.*

“ 5293. *Liability of factor under guaranty commission.*

“ 5294. *Factor cannot relieve himself of liability.*

5290. (§ 2750.) *Factor, what.*—A factor is an agent, who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

5291. (§ 2751.) *Obedience required from factor.*—A factor must obey the instructions of his principal to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

5292. (§ 2752.) *Sales on credit.*—A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the terms of credit, may not extend it.

5293. (§ 2753.) *Liability of factor under guaranty commission.*—A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

5294. (§ 2754.) *Factor cannot relieve himself from liability.*—A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds, cannot relieve himself from responsibility therefor without the consent of his principal.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

5295. (§ 2760.) One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

TITLE VII.

CARRIAGE.

- CHAPTER I. CARRIAGE IN GENERAL.
- II. CARRIAGE OF PERSONS.
- III. CARRIAGE OF PROPERTY.
- IV. CARRIAGE OF MESSAGES.
- V. COMMON CARRIERS.

CHAPTER I.

CARRIAGE IN GENERAL.

Section 5296. *Contract of carriage.*

“ 5297. *Obligations of gratuitous carriers.*

“ 5298. *Obligations of gratuitous carrier who has begun to carry.*

5296. (§ 2770.) *Contract of carriage.*—The contract of carriage is a contract for the conveyance of property, persons or messages, from one place to another.

5297. (§ 2771.) *Obligations of gratuitous carriers.*—Carriers without reward are subject to the same rules as employes without reward, except so far as is otherwise provided by this title.

5298. (§ 2772.) *Obligations of gratuitous carrier who has begun to carry.*—A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced his carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I. GRATUITOUS CARRIAGE OF PERSONS.

II. CARRIAGE FOR REWARD.

ARTICLE I.

GRATUITOUS CARRIAGE OF PERSONS.

5299. (§ 2780.) A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.

CARRIAGE FOR REWARD.

Section 5300. General duties of carrier.

“ 5301. *Vehicles.*

“ 5302. *Not to overlook his vehicle.*

“ 5303. *Treatment of passengers.*

“ 5304. *Rate of speed and delays.*

5300. (§ 2790.) *General duties of carrier.*—A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

Taillon v. Mears, 29 Mont. 169; 74 Pac. 423. This section is declaratory of the common law as it has existed for many years. A contract of carriage is, in effect, that the carrier, in consideration of the payment of the rate demand-

ed, will use all possible care and diligence in delivering the passenger safely and promptly at the place of destination.

Osgood v. Los Angeles Co., 137 Cal. 28; 70 Pac. 169.

5301. (§ 2791.) *Vehicles.*—A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Fisher v. S. P. R. Co., 89 Cal. 406; 26 Pac. 894.

5302. (§ 2792.) *Not to overload his vehicle.*—A carrier of persons for reward must not overcrowd or overload his vehicle.

5303. (§ 2793.) *Treatment of passengers.*—A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

5304. (§ 2794.) *Rate of speed and delays.*—A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

- ARTICLE I. GENERAL DEFINITIONS.
II. OBLIGATIONS OF THE CARRIER.
III. BILL OF LADING.
IV. FREIGHTAGE.

ARTICLE I.

GENERAL DEFINITIONS.

5305. (§ 2800.) Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

ARTICLE II.

OBLIGATIONS OF THE CARRIER.

- Section 5306. Care and diligence required of carriers.*
“ 5307. *Carrier to obey directions.*
“ 5308. *Conflict of orders.*
“ 5309. *Delivery of freight.*
“ 5310. *Place of delivery.*
“ 5311. *Obligations of carrier when freight is not delivered to consignee.*
“ 5312. *How carrier may terminate his liability.*

5306. (§ 2810.) *Care and diligence required of carriers.*—A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

5307. (§ 2811.) *Carrier to obey directions.*—A carrier must comply with the directions of the consignor or consignee to the same extent as an employe is bound to comply with those of his employer.

5308. (§ 2812.) *Conflict of orders.*—When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

5309. (§ 2813.) *Delivery of freight.*—A carrier of property must deliver it to the consignee at the place to which it is addressed, in the manner usual at that place.

5310. (§ 2814.) *Place of delivery.*—If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried on a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed.

2. If carried by water, it may be delivered at a wharf or other suitable landing, at or within a reasonable distance from the place of address.

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

5311. (§ 2815.) *Obligations of carrier when freight is not delivered to consignee.*—If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier he may give the notice by letter dropped in the nearest postoffice.

5312. (§ 2816.) *How carrier may terminate his liability.*—If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage, on account of the consignee, and giving notice thereof to him.

ARTICLE III.

BILL OF LADING.

- Section 5314. Bill of lading, what.*
 “ 5315. *Bill of lading negotiable.*
 “ 5316. *Same.*
 “ 5317. *Effect of bill of lading on rights, etc., of carrier.*
 “ 5318. *Bills of lading.*
 “ 5319. *Carrier exonerated by delivery according to bill of lading.*
 “ 5320. *Carrier may demand surrender of bill of lading before delivery.*

5314. (§ 2830.) *Bill of lading, what.*—A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

5315. (§ 2831.) *Bill of lading negotiable.*—All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

5316. (§ 2832.) *Same.*—When a bill of lading is made to “bearer” or equivalent terms, a simple transfer thereof, by delivery, conveys the same title as an indorsement.

5317. (§ 2833.) *Effect of bill of lading on rights, etc., of carrier.*—A bill of lading does not alter the rights or obligations of the carrier as defined in this chapter, unless it is plainly inconsistent therewith.

5318. *Bills of lading.*—A carrier on demand must subscribe and deliver to the consignor an original Bill of Lading and on demand must also furnish to him any reasonable number of copies thereof, each of such copies to be of the same tenor as the original and to express truly the original contract for carriage; and if any carrier refuses to do so, the consignor may take the freight from him and recover from him, besides, all damage thereby occasioned. [*Act approved February 28th, 1901.*] (7th Sess. 154.)

5319. (§ 2835.) *Carrier exonerated by delivery according to bill of lading.*—A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

McKelvey v. Perham, 31 Mont. 606; Cavallaro v. Texas R. Co., 110 Cal. 79 Pac. 254. 357; 42 Pac. 918.

5320. (§ 2836.) *Carrier may demand surrender of bill of lading before delivery.*—When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.

FREIGHTAGE.

Section 5321. *When freightage is to be paid.*

“ 5322. *Consignor, when liable for freightage.*

“ 5323. *Consignee, when liable.*

“ 5324. *Natural increase of freight.*

“ 5325. *Apportionment by contract.*

“ 5326. *Same.*

“ 5327. *Apportionment according to distance.*

“ 5328. *Freight carried further than agreed, etc.*

“ 5329. *Carrier's lien for freightage.*

5321. (§ 2840.) *When freightage is to be paid.*—A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

5322. *Consignor, when liable for freightage.*—The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

5323. (§ 2842.) *Consignee, when liable.*—The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

5324. (§ 2843.) *Natural increase of freight.*—No freightage can be charged upon the natural increase of freight.

5325. (§ 2844.) *Apportionment by contract.*—If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

5326. (§ 2845.) *Same.*—If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

5327. (§ 2846.) *Apportionment according to distance.*—If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

5328. (§ 2847.) *Freight carried further than agreed, etc.*—If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and cannot refuse to deliver it, on demand of the consignee, at the place and time of its arrival.

5329. (§ 2848.) *Carrier's lien for freightage.*—A carrier has a lien for freightage, which is regulated by the title on liens.

CHAPTER IV.

CARRIAGE OF MESSAGES.

Section 5330. Obligations of carriers of messages.

“ 5331. *Degree of care and diligence required.*

5330. (§ 2860.) *Obligations of carriers of messages.*—A carrier of messages for reward, other than by telegraph or telephone, must deliver them at the place to which they are addressed, or to the person for whom they are intended. Such carrier, by telegraph or telephone, must deliver them at such place and to such person, provided the place of address, or the person for whom they are intended, is within a distance of two miles from the main of-

fice of the carrier in the city or town to which the messages are transmitted, and the carrier is not required, in making the delivery, to pay on his route, toll or ferriage; but for any distance beyond one mile from such office, compensation may be charged for a messenger employed by the carrier.

Pacific Co. v. Western Union Co., 123 Cal. 430; 56 Pac. 103.

5331. (§ 2861.) *Degree of care and diligence required.*—A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

Coit v. Western Union Co., 130 Cal. 660; 63 Pac. 83.

CHAPTER V.

COMMON CARRIERS.

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|---------|------|------------------------------|
| ARTICLE | I. | COMMON CARRIERS IN GENERAL |
| | II. | COMMON CARRIERS OF PERSONS. |
| | III. | COMMON CARRIERS OF PROPERTY. |
| | IV. | COMMON CARRIERS OF MESSAGES. |

ARTICLE I.

COMMON CARRIERS IN GENERAL.

Section 5332. *Common carrier, what.*

“ 5333. *Obligation to accept freight.*

“ 5334. *Obligation not to give preference.*

“ 5335. *What preferences he must give.*

“ 5336. *Starting.*

“ 5337. *Compensation.*

“ 5338. *Obligations of carrier altered only by agreement.*

“ 5339. *Certain agreements void.*

“ 5340. *Effect of written contract.*

“ 5341. *When not liable for loss.*

5332. (§ 2870.) *Common carrier, what.*—Every one who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages, is a common carrier of whatever he thus offers to carry.

5333. (§ 2871.) *Obligation to accept freight.*—A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

Barrett v. Market R. Co., 81 Cal. 298; 22 Pac. 859.

5334. (§ 2872.) *Obligation not to give preference.*—A common carrier must not give preference in time, price or otherwise to one person over another. Every common carrier of passengers by railroad, or by vessel plying upon waters lying wholly within this state, shall establish a schedule time for the starting of trains or vessels from their respective stations or wharves, of

which public notice shall be given, and shall, weather permitting, except in case of accident or detention caused by connecting lines, start their said trains or vessels at or within ten minutes after the schedule time so established and notice given, under a penalty of two hundred and fifty dollars for each neglect so to do, to be recovered by action before any court of competent jurisdiction, upon complaint filed by the county attorney of the county in the name of the state, and paid into the common school fund of the said county.

Pfister v. Central P. R. Co., 70 Cal. 178; 11 Pac. 686.

5335. (§ 2873.) *What preferences he must give.*—A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this state.

5336. (§ 2874.) *Starting.*—A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

5337. (§ 2875.) *Compensation.*—A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

5338. (§ 2876.) *Obligations of carrier altered only by agreement.*—The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

Nelson v. Great N. R. Co., 28 Mont. 321; 72 Pac. 649. A common carrier cannot by special contract limit its liability for delay in the transportation of prop-

erty arising from its negligence, or the negligence of its servants.

Rose v. N. P. R. Co., 35 Mont. 78; 88 Pac. 767.

5339. (§ 2877.) *Certain agreements void.*—A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or wilful wrong of himself or his servants.

Nelson v. Great N. R. Co., 28 Mont. 321; 72 Pac. 649.

Merrill v. Pacific T. Co., 131 Cal. 589; 63 Pac. 915.

5340. (§ 2878.) *Effect of written contract.*—A passenger, consignor, or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

Rose v. N. P. R. Co., 35 Mont. 78; 88 Pac. 767. A contract made by a railway company with a passenger in the sale of a ticket, which contained the provision that in view of the reduced rate at which it was furnished, the liability

of the carrier for loss of baggage should be limited to \$100, is not void as against public policy.

Merrill v. Pacific I. Co., 131 Cal. 586; 63 Pac. 915.

5341. (§ 2879.) *When not liable for loss.*—A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he is informed at the time of its receipt of the value of its contents.

ARTICLE II.

COMMON CARRIERS OF PERSONS.

- Section 5342. *Obligation to carry baggage.*
 " 5343. *Baggage, what.*
 " 5344. *Liability for baggage.*
 " 5345. *Baggage, how carried and delivered.*
 " 5346. *Obligation to provide vehicles.*
 " 5347. *Seats for passengers.*
 " 5348. *Regulations for conduct of business.*
 " 5349. *Fare, when payable.*
 " 5350. *Ejection of passengers.*
 " 5351. *Fare not payable after ejection.*
 " 5352. *Carrier's lien.*

5342. (§ 2890.) *Obligation to carry baggage.*—A common carrier of persons, unless his vehicle is fitted for the reception of persons exclusively, must receive and carry a reasonable amount of baggage for each passenger, without charge, except for an excess of weight over one hundred pounds to a passenger; but if such carrier be a proprietor of a stage line, he may not receive and carry for each passenger by such stage line, without charge, more than sixty pounds of baggage.

Metz v. California R. Co., 85 Cal. 330; 24 Pac. 610.

5343. (§ 2891.) *Baggage, what.*—Baggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

Metz v. California R. Co., 85 Cal. 330; 24 Pac. 610.

5344. (§ 2892.) *Liability for baggage.*—The liability of a carrier for baggage received by him with a passenger is the same as that of a common carrier of property.

Rose v. N. P. R. Co., 35 Mont. 80; 88 Pac. 767. Pfister v. Central P. R. Co., 70 Cal. 173; 11 Pac. 686.

5345. (§ 2893.) *Baggage, how carried and delivered.*—A common carrier must deliver every passenger's baggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belonged, except that where baggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their baggage so checked and transported, it is carried at their risk.

Pfister v. Central P. R. Co., 70 Cal. 173; 11 Pac. 686.

5346. (§ 2894.) *Obligation to provide vehicles.*—A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

5347. (§ 2895.) *Seats for passengers.*—A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

5348. (§ 2896.) *Regulations for conduct of business.*—A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

Ames v. Southern P. Co., 141 Cal. 732; 75 Pac. 310.

5349. (§ 2897.) *Fare, when payable.*—A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

5350. (§ 2898.) *Ejection of passengers.*—A passenger who refuses to pay his fare or conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

Ames v. Southern P. Co., 141 Cal. 732; 75 Pac. 310.

5351. (§ 2899.) *Fare not payable after ejection.*—After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

5352. (§ 2900.) *Carrier's lien.*—A common carrier has a lien upon the baggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

ARTICLE III.

COMMON CARRIERS OF PROPERTY.

Section 5353. *Liability of inland carriers for loss.*

“ 5354. *When exemptions do not apply.*

“ 5355. *Liability for delay.*

“ 5356. *Consignor of valuables to declare their nature.*

“ 5357. *Delivery of freight beyond usual route.*

“ 5358. *Proof to be given in case of loss.*

“ 5359. *Carrier's services, other than carriage and delivery.*

“ 5360. *Sale of perishable property for freight*

5353. (§ 2910.) *Liability of inland carriers for loss.*—Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability, pursuant to §§ 5309 (2813) to 5312 (2816), for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice, weakness, or a spontaneous action of the property itself.

2. The act of a public enemy of the United States, or of this state.

3. The act of the law; or,

4. An irresistible superhuman cause.

Palmer v. Atchison R. Co., 101 Cal. 194; 35 Pac. 630.

5354. (§ 2911.) *When exemptions do not apply.*—A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

5355. (§ 2912.) *Liability for delay.*—A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

Nelson v. Great N. R. Co., 28 Mont. 321; 72 Pac. 649. A common carrier cannot by special contract limit its liability for delay in the transportation of

property arising from its negligence, or the negligence of its servants.

Palmer v. Atchison R. Co., 101 Cal. 193; 35 Pac. 630.

5356. (§ 2913.) *Consignor of valuables to declare their nature.*—A common carrier of gold, silver, platina, or of precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass or china-ware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight, nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

Michalitschke v. Wells F. & Co., 118 Cal. 689; 50 Pac. 847.

5357. (§ 2914.) *Delivery of freight beyond usual route.*—If a common carrier accepts freight for a place beyond his usual, route, he must, unless he stipulates otherwise, deliver it at the end of his route, in that direction, to some other competent carrier carrying to the place of address, or connected with those who thus carry.

Colfax Co. v. Southern P. Co., 118 Cal. 651; 50 Pac. 775.

5358. (§ 2915.) *Proof to be given in case of loss.*—If freight addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

5359. (§ 2916.) *Carrier's services, other than carriage and delivery.*—In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

5360. (§ 2917.) *Sale of perishable property for freight.*—If, from any cause other than want of ordinary care and diligence

on his part, a common carrier is unable to deliver perishable property transported by him, and collect his charges thereon, he may cause the property to be sold in open market, to satisfy his lien for freightage

ARTICLE IV.

COMMON CARRIERS OF MESSAGES.

Section 5361. Order of transmission of telegraphic messages.

“ 5362. *Order in other cases.*

“ 5363. *Damages when message is refused or postponed.*

5361. (§ 2930.) *Order of transmission of telegraphic messages.*—A carrier of messages by telegraph or telephone must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States or of this state, on public business.

2. Messages giving information relating to the sickness or death of any person.

3. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

4. Other messages in the order in which they were received.

5362. (§ 2931.) *Order in other cases.*—A common carrier of messages, otherwise than by telegraph or telephone, must transmit them in the order in which he receives them, except messages from agents of the United States, or of this state, on public business, to which he must always give priority.

5363. (§ 2932.) *Damages when message is refused or postponed.*—Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUSTS.

CHAPTER I. TRUSTS IN GENERAL.

II. TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I. NATURE AND CREATION OF A TRUST.

II. OBLIGATIONS OF TRUSTEES.

III. OBLIGATIONS OF THIRD PERSONS.

ARTICLE I.

NATURE AND CREATION OF A TRUST.

Section 5364. Trusts classified.

- “ 5365. *Voluntary trust, what.*
- “ 5366. *Involuntary trust, what.*
- “ 5367. *Parties to the contract.*
- “ 5368. *What constitutes one a trustee.*
- “ 5369. *For what purpose a trustee may be created.*
- “ 5370. *Voluntary trust, how created as to trustor.*
- “ 5371. *How created as to trustee.*
- “ 5372. *Involuntary trustee, who is.*
- “ 5373. *Involuntary trust, resulting from fraud, etc.*

5364. (§ 2950.) *Trusts classified.*—A trust is either:

1. Voluntary; or,
2. Involuntary.

McDonald v. American N. Bank, 25 Mont. 489; 65 Pac. 911.

Barker v. Hurley, 132 Cal. 26; 63 Pac. 1071.

5365. (§ 2951.) *Voluntary trust, what.*—A voluntary trust is an obligation arising out of a personal confidence reposed in and voluntarily accepted by one for the benefit of another.

McDonald v. American N. Bank, 25 Mont. 489; 65 Pac. 911.

5366. (§ 2952.) *Involuntary trust, what.*—An involuntary trust is one which is created by operation of law.

Fulton v. Jansen, 99 Cal. 590; 34 Pac. 331.

5367. (§ 2953.) *Parties to the contract.*—The person whose confidence creates the trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

McDonald v. American N. Bank, 25 Mont. 494; 65 Pac. 911.

Colton v. Stanford, 82 Cal. 374; 23 Pac. 16.

5368. (§ 2954.) *What constitutes one a trustee.*—Every person who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons to whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

White v. Warren, 120 Cal. 323; 49 Pac. 129.

5369. (§ 2955.) *For what purpose a trustee may be created.*—A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

Toland v. Toland, 123 Cal. 144; 55 Pac. 681.

5370. (§ 2956.) *Voluntary trust, how created as to trustor.*—Subject to the provisions of § 4537 (1311), a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose, and beneficiary of the trust.

McDonald v. American N. Bank, 25 Mont. 494; 65 Pac. 911. Barker v. Hurley, 132 Cal. 27; 63 Pac. 1071.

5371. (§ 2957.) *How created as to trustee.*—Subject to the provisions of § 4537 (1311), a voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty:

1. His acceptance of the trust, or his acknowledgement, made upon sufficient consideration, of its existence; and,
2. The subject, purpose, and beneficiary of the trust.

Barker v. Hurley, 132 Cal. 27; 63 Pac. 1071.

5372. (§ 2958.) *Involuntary trustee, who is.*—One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

Lutey v. Clark, 31 Mont. 54; 77 Pac. 307. Where the receiver of a corporation sold some of its property, and thereafter the order appointing the receiver and authorizing a sale was reversed on appeal, the purchasers held the property

and the proceeds of their sale thereof as involuntary trustees for the corporation, and the receiver held the purchase price as an involuntary trustee for the purchasers.

5373. (§ 2959.) *Involuntary trust, resulting from fraud, etc.*—One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other or better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

Lutey v. Clark, 31 Mont. 54; 77 Pac. 307.

Bank v. Wakefield, 148 Cal. 561; 83 Pac. 1076.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

- Section 5374. *Trustee's obligation to good faith.*
- " 5375. *Trustee not to use property for his own benefit.*
- " 5376. *Certain transactions forbidden.*
- " 5377. *Trustee's influence not to be used for his advantage.*
- " 5378. *Trustee not to assume a trust adverse to interest of beneficiary.*
- " 5379. *To disclose adverse interest.*
- " 5380. *Trustee guilty of fraud, when.*
- " 5381. *Presumption against trustees.*
- " 5382. *Trustee mingling trust property with his own.*
- " 5383. *Measure of liability for breach of trust.*
- " 5384. *Same.*
- " 5385. *Co-trustees, how far liable for each other.*

5374. (§ 2970.) *Trustee's obligation to good faith.*—In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

McConnell v. Combination Co., 30 Mont. 257; 76 Pac. 200. Donations by a corporation organized for general mining purposes for the purpose of creating a new county are *ultra vires*.

The majority stockholders of a corporation, who sanction the acts of its directors and officials in making illegal expenditures of the corporate funds, bind themselves by estoppel, but such acts are not binding on stockholders, who did not take part in the proceedings or sanction the making of such expenditures.

A resolution of four directors of a corporation voting three of their number salaries and giving them back pay, predicated on by-laws previously passed by five directors, including the four first mentioned, is void.

The removal of the official business of a domestic mining corporation beyond the state, and acts of the directors in attempting to hold regular monthly meetings and sit as the board of directors in another state, are *ultra vires*.

Coombs v. Barker, 31 Mont. 545; 79 Pac. 7. The directors of a mining corporation are not allowed to profit by virtue of their position, and a breach of official duty on their part is fraud in law. A director, who purchases the property of the corporation at a judicial sale, must not be permitted to obtain a dishonest advantage over the corporation, or its stockholders.

Smith v. Goethe, 147 Cal. 732; 82 Pac. 384.

5375. (§ 2971.) *Trustee not to use property for his own benefit.*—A trustee may not use or deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner.

Pacific Works v. Smith, 145 Cal. 364; 78 Pac. 550.

5376. (§ 2972.) *Certain transactions forbidden.*—Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary, not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

Smith v. Goethe, 147 Cal. 732; 82 Pac. 384.

5377. (§ 2973.) *Trustee's influence not to be used for his advantage.*—A trustee may not use the influence which his position gives to him to obtain any advantage from his beneficiary.

Calmon v. Sarraille, 142 Cal. 641; 76 Pac. 486.

5378. (§ 2974.) *Trustee not to assume a trust adverse to interest of beneficiary.*—No trustee, so long as he remains in the

trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

McCabe v. Healy, 138 Cal. 95; 70 Pac. 1008.

5379. (§ 2975.) *To disclose adverse interest.*—If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

5380. (§ 2976.) *Trustee guilty of fraud, when.*—Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust.

McConnell v. Combination Co., 30 Mont. 264; 76 Pac. 202. McCabe v. Healy, 138 Cal. 95; 70 Pac. 1008.

5381. (§ 2977.) *Presumption against trustees.*—All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Heinrich v. Heinrich, 2 C. App. 485; 84 Pac. 326.

5382. (§ 2978.) *Trustee mingling trust property with his own.*—A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

Matter of Bane, 120 Cal. 536-7; 52 Pac. 852.

5383. (§ 2979.) *Measure of liability for breach of trust.*—A trustee who uses or disposes of the trust property contrary to § 5375 (2971), may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it with its fruits, or to account for its proceeds, with interest.

Demars v. Hudon, 33 Mont. 175; 82 Pac. 952.

5384. (§ 2980.) *Same.*—A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

5385. (§ 2981.) *Co-trustees, how far liable for each other.*—A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others.

Bermingham v. Wilcox, 120 Cal. 471; 52 Pac. 822.

ARTICLE III.

OBLIGATIONS OF THIRD PERSONS.

Section 5386. Third person, when involuntary trustee.

“ 5387. *When third person must see to application of trust property.*

5386. (§ 2990.) *Third person, when involuntary trustee.*—Every one to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration.

Chapman v. Hughes, 134 Cal. 657; 58 Pac. 298.

5387. (§ 2991.) *When third person must see to application of trust property.*—One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I. NATURE AND CREATION OF THE TRUST.

II. OBLIGATIONS OF TRUSTEES.

III. POWERS OF TRUSTEES.

IV. RIGHTS OF TRUSTEES.

V. TERMINATION OF THE TRUST.

VI. SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

ARTICLE I.

NATURE AND CREATION OF THE TRUST.

Section 5388. Who are trustees within scope of this chapter.

“ 5389. *Creation of trust.*

“ 5390. *Trustees appointed by court.*

“ 5391. *Declaration of trust.*

“ 5392. *Same.*

5388. (§ 3000.) *Who are trustees within scope of this chapter.*—The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

Estate of Bell, 145 Cal. 649; 79 Pac. 358.

5389. (§ 3001.) *Creation of trust.*—The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission.

Booth v. Oakland Bank, 122 Cal. 25; 54 Pac. 370.

5390. (§ 3002.) *Trustees appointed by court.*—When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of the last section.

Dyer v. Leach, 91 Cal. 193; 27 Pac. 598.

5391. (§ 3003.) *Declaration of trust.*—The nature, extent and object of a trust are expressed in the declaration of trust.

5392. (§ 3004.) *Same.*—All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.

OBLIGATIONS OF TRUSTEES.

Section 5393. *Trustees must obey declaration of trust.*

“ 5394. *Degree of care and diligence in execution of trust.*

“ 5395. *Duty of trustee as to appointment of successor.*

“ 5396. *Investment of money by trustee.*

“ 5397. *Interest, simple or compound, on omission to invest trust moneys.*

“ 5398. *Purchase by trustee of claims against trust fund.*

5393. (§ 3010.) *Trustees must obey declaration of trust.*—A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested in the same manner and to the same extent as an employee.

5394. (§ 3011.) *Degree of care and diligence in execution of trust.*—A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

5395. (§ 3012.) *Duty of trustee as to appointment of successor.*—If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

5396. (§ 3013.) *Investment of money by trustee.*—A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

Elizalde v. Elizalde, 137 Cal. 638; 66 Pac. 369.

5397. (§ 3014.) *Interest, simple or compound, on omission to invest trust moneys.*—If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is wilful.

Bemmerly v. Woodward, 124 Cal. 573; 57 Pac. 561.

5398. (§ 3015.) *Purchase by trustee of claims against trust fund.*—A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

Smith v. Goethe, 147 Cal. 732; 82 Pac. 384.

ARTICLE III.

POWERS OF TRUSTEES.

Section 5399. Trustee's powers as agent.

“ 5400. *All must act.*

“ 5401. *Discretionary powers.*

5399. (§ 3020.) *Trustee's powers as agent.*—A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

5400. (§ 3021.) *All must act.*—Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

5401. (§ 3022.) *Discretionary powers.*—A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.

RIGHTS OF TRUSTEES.

Section 5402. Indemnification of trustee.

“ 5403. *Compensation of trustee.*

“ 5404. *Involuntary trustee.*

5402. (§ 3030.) *Indemnification of trustee.*—A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

Mitau v. Roddan, 149 Cal. 16; 84 Pac. 145.

5403. (§ 3031.) *Compensation of trustee.*—When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

5404. (§ 3032.) *Involuntary trustee.*—An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.

TERMINATION OF THE TRUST.

Section 5405. *Trust, how extinguished.*

“ 5406. *Not revocable.*

“ 5407. *Trustee's office, how vacated.*

“ 5408. *Trustee, how discharged.*

“ 5409. *Removal by district court.*

5405. (§ 3040.) *Trust, how extinguished.*—A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Wittfield v. Forster, 124 Cal. 420; 57 Pac. 219.

5406. (§ 3041.) *Not revocable.*—A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

Booth v. Oakland Bank, 122 Cal. 26; 54 Pac. 370.

5407. (§ 3042.) *Trustees office, how vacated.*—The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

5408. (§ 3043.) *Trustee, how discharged.*—A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.

4. By the consent of the beneficiary, if he had capacity to contract.

5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,

6. By the district court.

Estate of Fair, 132 Cal. 542; 60 Pac. 442.

5409. (§ 3044.) *Removal by district court.*—The district court may remove any trustee who has violated or is unfit to execute the trust; or may accept the resignation of a trustee.

Fatjo v. Swasey, 111 Cal. 635; 44 Pac. 225.

ARTICLE VI.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

Section 5410. Vacant trusteeship filled by court.

“ 5411. *Survivorship between co-trustees.*

“ 5412. *District court as trustee.*

5410. (§ 3050.) *Vacant trusteeship filled by court.*—The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

Dyer v. Leach, 91 Cal. 193; 27 Pac. 598.

5411. (§ 3051.) *Survivorship between co-trustees.*—On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others.

5412. (§ 3052.) *District court as trustee.*—When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the district court of the county where the trust property, or some portion thereof is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

In re Walker, 149 Cal. 214; 85 Pac. 310.

TITLE IX.

AGENCY.

CHAPTER I. AGENCY IN GENERAL.

II. PARTICULAR AGENCIES.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I. DEFINITION OF AGENCY.

II. AUTHORITY OF AGENTS.

III. MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

ARTICLE IV. OBLIGATIONS OF AGENTS TO THIRD PERSONS.

V. DELEGATION OF AGENCY.

VI. TERMINATION OF AGENCY.

ARTICLE I.

DEFINITION OF AGENCY.

Section 5413. Agency, what.

“ 5414. *Who may appoint and who may be an agent.*

“ 5415. *Agents, general or special.*

“ 5416. *Agency, actual or ostensible.*

“ 5417. *Actual agency.*

“ 5418. *Ostensible agency.*

5413. (§ 3070.) *Agency, what.*—An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

Nicholls v. Mapes, 1 C. App. 355; 82 Pac. 265.

5414. (§ 3071.) *Who may appoint and who may be an agent.*—Any person having capacity to contract may appoint an agent, and any person may be an agent.

5415. (§ 3072.) *Agents, general or special.*—An agent for a particular act or transaction is called a special agent. All others are general agents.

Moore v. Skyles, 33 Mont. 137; 82 Pac. 799. One to whom a money order was given by another, with instructions to see if it was all right, and if so, to get it cashed, was a special agent of the latter.

People v. Jones, 123 Cal. 302; 55 Pac. 992.

5416. (§ 3073.) *Agency, actual or ostensible.*—An agency is either actual or ostensible.

5417. *Actual agency.*—An agency is actual when the agent is really employed by the principal.

5418. (§ 3075.) *Ostensible agency.*—An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

Dover v. Pittsburg Co., 143 Cal. 504; 77 Pac. 405.

ARTICLE II.

AUTHORITY OF AGENTS.

Section 5419. What authority may be conferred.

“ 5420. *Agent may perform acts required of principal by code.*

“ 5421. *Agent cannot have authority to defraud principal.*

“ 5422. *Creation of agency.*

“ 5423. *Consideration unnecessary.*

“ 5424. *Form of authority.*

- Section 5425. Ratification of agent's act.*
 " 5426. *Ratification of part of a transaction.*
 " 5427. *When ratification void.*
 " 5428. *Ratification not to work injury to third persons.*
 " 5429. *Rescission of ratification.*
 " 5430. *Measure of agent's authority.*
 " 5431. *Actual authority, what.*
 " 5432. *Ostensible authority, what.*
 " 5433. *Agent's authority as to persons having notice of restrictions upon it.*
 " 5434. *Agent's necessary authority.*
 " 5435. *Agent's power to disobey instructions.*
 " 5436. *Authority to be construed by its specific, rather than by its general terms.*
 " 5437. *Exceptions to general authority.*
 " 5438. *What included in authority to sell personal property.*
 " 5439. *What included in authority to sell real property.*
 " 5440. *Authority of general agent to receive price of property.*
 " 5441. *Authority of special agent to receive price.*

5419. (§ 3080.) *What authority may be conferred.*—An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

Nicholls v. Mapes, 1 C. App. 355; 82 Pac. 265.

5420. (§ 3081.) *Agent may perform acts required of principal by code.*—Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

5421. (§ 3082.) *Agent cannot have authority to defraud principal.*—An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals to be, a fraud upon the principal.

5422. (§ 3083.) *Creation of agency.*—An agency may be created, and an authority may be conferred, by a precedent authorization or a subsequent ratification.

Dover v. Pittsburg Co., 143 Cal. 504; 77 Pac. 405.

5423. (§ 3084.) *Consideration unnecessary.*—A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

5424. (§ 3085.) *Form of authority.*—An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

Cobban v. Hecklen, 27 Mont. 257; 70 Pac. 809. The authority of an agent to contract to sell land before the adoption of this section was not required to be in writing, and could be shown by oral testimony, or any evidence tending to prove agency.

Case v. Kramer, 34 Mont. 149; 85 Pac. 879.

Lindsley v. McGrath, 34 Mont. 569; 87 Pac. 962.

Curtin v. Salmon River Co., 141 Cal. 311; 74 Pac. 851.

5425. (§ 3086.) *Ratification of agent's act.*—A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or restraining the benefit of the act, with notice thereof.

Cobban v. Hecklen, 27 Mont. 258; 70 Pac. 809.

5426. (§ 3087.) *Ratification of part of a transaction.*—Ratification of part of an indivisible transaction is a ratification of the whole.

Colpe v. Jubilee Co., 2 C. App. 399; 84 Pac. 324.

5427. (§ 3088.) *When ratification void.*—A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Krumdick v. White, 107 Cal. 41; 39 Pac. 1066.

5428. (§ 3089.) *Ratification not to work injury to third persons.*—No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Krumdick v. White, 107 Cal. 41; 39 Pac. 1066.

5429. (§ 3090.) *Rescission of ratification.*—A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Willey v. Clements, 146 Cal. 99; 79 Pac. 850.

5430. (§ 3091.) *Measure of agent's authority.*—An agent has such authority as the principal, actually or ostensibly, confers upon him.

5431. (§ 3092.) *Actual authority, what.*—Actual authority is such as the principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

5432. (§ 3093.) *Ostensible authority, what.*—Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

Case v. Kramer, 34 Mont. 150; 85 Pac. 880.

Dover v. Pittsburg Co., 143 Cal. 504; 77 Pac. 405.

5433. (§ 3094.) *Agent's authority as to persons having notice of restrictions upon it.*—Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

5434. (§ 3095.) *Agent's necessary authority.*—An agent has authority:

1. To do everything necessary and proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

Case v. Kramer, 34 Mont. 150; 85 Pac. 880.

Consolidated Bank v. Pacific Co., 95 Cal. 12; 30 Pac. 96.

5435. (§ 3096.) *Agent's power to disobey instructions.*—An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

5436. (§ 3097.) *Authority to be construed by its specific, rather than by its general terms.*—When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

5437. (§ 3098.) *Exceptions to general authority.*—An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so.

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article II., chapter I., of the last title.

Pacific Works v. Smith, 145 Cal. 363; 78 Pac. 550.

5438. (§ 3099.) *What included in authority to sell personal property.*—An authority to sell personal property includes authority to warrant the title of the principal, and the quantity and quality of the property.

5439. (§ 3100.) *What included in authority to sell real property.*—An authority to sell and convey real property includes authority to give the usual covenants of warranty.

5440. (§ 3101.) *Authority of general agent to receive price of property.*—A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

Rigby v. Lowe, 125 Cal. 614; 58 Pac. 153.

5441. (§ 3102.) *Authority of special agent to receive price.*—A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

Section 5442. Principal, how affected by acts of agent within the scope of his authority.

“ 5443. *Principal, when bound by incomplete execution of authority.*

“ 5444. *Notice to agent, when notice to principal.*

“ 5445. *Obligation of principal when agent exceeds his authority.*

“ 5446. *For acts done under a mere ostensible authority.*

“ 5447. *When exclusive credit is given to agent.*

“ 5448. *Rights of person who deals with agent without knowledge of agency.*

“ 5449. *Instrument intended to bind principal does bind him.*

“ 5450. *Principal's responsibility for agent's negligence or omission.*

“ 5451. *Principal's responsibility for wrongs wilfully committed by the agent.*

5442. (§ 3110.) *Principal, how affected by acts of agent within the scope of his authority.*—An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

5443. (§ 3111.) *Principal, when bound by incomplete execution of authority.*—A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

5444. (§ 3112.) *Notice to agent, when notice to principal.*—As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith, and the exercise of ordinary care and diligence, to communicate to the other.

Coombs v. Barker, 31 Mont. 560; 79 Pac. 12. One who joins through an agent in the redemption of property sold at a judicial sale is charged with all the knowledge that the agent possesses concerning the matter.

5445. (§ 3113.) *Obligation of principal when agent exceeds his authority.*—When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

5446. (§ 3114.) *For acts done under a mere ostensible authority.*—A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value upon the faith thereof.

Dover v. Pittsburg Co., 143 Cal. 504; 77 Pac. 405.

5447. (§ 3115.) *When exclusive credit is given to agent.*—If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

5448. (§ 3116.) *Rights of person who deals with agent without knowledge of agency.*—One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

5449. (§ 3117.) *Instrument intended to bind principal does bind him.*—An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

5450. (§ 3118.) *Principal's responsibility for agent's negligence or omission.*—Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his wilful omission to fulfill the obligations of the principal.

5451. (§ 3119.) *Principal's responsibility for wrongs wilfully committed by the agent.*—A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.

OBLIGATIONS OF AGENTS TO THIRD PERSONS.

Section 5452. Warranty of authority.

“ 5453. *Agent's responsibility to third persons.*

“ 5454. *Obligation of agent to surrender property to third person.*

“ 5455. *Agent not having capacity to contract.*

5452. (§ 3130.) *Warranty of authority.*—One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

5453. (§ 3131.) *Agent's responsibility to third persons.*—One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no other:

1. When, with his consent, credit is given to him personally in a transaction.

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature.

5454. (§ 3132.) *Obligation of agent to surrender property to third person.*—If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on account of the same; and is responsible therefor, if, after notice to the owner, he delivers it to his principal.

5455. (§ 3133.) *Agent not having capacity to contract.*—The provisions of this article are subject to the provisions of part I., divisions first, of this code.

ARTICLE V.

DELEGATION OF AGENCY.

Section 5456. Agent's delegation of his powers.

“ 5457. *Agent's unauthorized employment of sub-agent.*

“ 5458. *Sub-agent, rightfully appointed, represents principal.*

5456. (§ 3140.) *Agent's delegation of his powers.*—An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.

2. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform.

3. When it is the usage of the place to delegate such powers; or,

4. When such delegation is specially authorized by the principal.

Bond v. Hurd, 31 Mont. 320; 78 Pac. 582. Where an agent was authorized by a master to employ medical assistance for an injured servant, such agent had no authority to delegate to a physician employed authority to employ an assistant.

5457. (§ 3141.) *Agent's unauthorized employment of sub-agent.*—If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

5458. (§ 3142.) *Sub-agent, rightfully appointed, represents principal.*—A sub-agent lawfully appointed, represents the principal in like manner with the original agent, and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.

TERMINATION OF AGENCY.

Section 5459. Termination of agency.

“ 5460. *Same.*

5459. (§ 3150.) *Termination of agency.*—An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term.
2. The extinction of its subject.
3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

Nord v. B. & M. Co., 33 Mont. 476; 89 Pac. 647. This section is declaratory of the common law.

5460. (§ 3151.) *Same.*—Unless the power of the agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

1. Its revocation by the principal.
2. His death; or,
3. His incapacity to contract.

State v. Court, 30 Mont. 8; 75 Pac. 516. A party became insane and was indebted to an attorney who was representing him at the time with respect to his property interests. The attorney did

not have the right *per se* to appear for the guardian of the party.

Nord v. B. & M. Co., 33 Mont. 476; 89 Pac. 647. This section is declaratory of the common law rule.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I. AUCTIONEERS.

II. FACTORS.

ARTICLE I.

AUCTIONEERS.

Section 5461. Auctioneer's authority from the seller.

“ 5462. *Auctioneer's authority from the bidder.*

5461. (§ 3160.) *Auctioneer's authority from the seller.*—An auctioneer, in the absence of special authority or usage to the contrary, has authority from the seller only as follows:

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell according to § 5438 (3099).
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold, upon payment of the price.
6. To collect the price; and,

7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

5462. (§ 3161.) *Auctioneer's authority from the bidder.*—An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in the title on sale.

ARTICLE II.

FACTORS.

Section 5463. Factor, what.

“ 5464. *Actual authority of factor.*

“ 5465. *Ostensible authority.*

5463. (§ 1370.) *Factor, what.*—A factor is an agent, as defined by § 5290 (2750).

5464. (§ 3171.) *Actual authority of factor.*—In addition to the authority of agents in general, a factor has actual authority for his principal, unless specially restricted:

1. To insure property consigned to him uninsured.
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

5465. (§ 3172.) *Ostensible authority.*—A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

TITLE X.

PARTNERSHIP.

CHAPTER. I. PARTNERSHIP IN GENERAL.

II. GENERAL PARTNERSHIP.

III. SPECIAL PARTNERSHIP.

IV. MINING PARTNERSHIP.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I. WHAT CONSTITUTES A PARTNERSHIP.

II. PARTNERSHIP PROPERTY.

III. MUTUAL OBLIGATIONS OF PARTNERS.

IV. RENUNCIATION OF PARTNERSHIP.

ARTICLE I.

WHAT CONSTITUTES A PARTNERSHIP.

Section 5466. Partnership, what.

“ 5467. *Formation of partnership.*

5466. (§ 3180.) *Partnership, what.*—Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

Beasley v. Berry, 33 Mont. 481; 84 Pac. 792. The fact that an employe hired to buy and handle sheep, and purchase feed for them, and generally to have charge of the business of the employe, was to receive one-third of the profits, besides a monthly salary, did not constitute him a partner. The business

was carried on in the name of the employer, who furnished the funds and never permitted himself to be held out as a partner with the employe. The sharing of profits is evidence that a partner exists, but is not conclusive.

Prince v. Lamb, 128 Cal. 126; 60 Pac. 689.

5467. (§ 3181.) *Formation of partnership.*—A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

Beasley v. Berry, 33 Mont. 481; 84 Pac. 792.

ARTICLE II.

PARTNERSHIP PROPERTY.

Section 5468. *Partnership property, what.*

“ 5469. *Partner's interest in partnership property.*

“ 5470. *Partner's share in profits and losses.*

“ 5471. *When division of losses implied.*

“ 5472. *Partner may require application of partnership property to payment of debts.*

“ 5473. *What property is partnership property by presumption.*

5468. (§ 3190.) *Partnership property, what.*—The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

5469. (§ 3191.) *Partner's interest in partnership property.*—The interest of each member of a partnership extends to every portion of its property.

Beasley v. Berry, 33 Mont. 481; 84 Pac. 792.

People v. Warner, 147 Cal. 594; 82 Pac. 196.

5470. (§ 3192.) *Partner's share in profits and losses.*—In the absence of any agreement on the subject, the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

5471. (§ 3193.) *When division of losses implied.*—An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Plass v. Plass, 122 Cal. 12; 54 Pac. 372.

5472. (§ 3194.) *Partner may require application of partnership property to payment of debts.*—Each member of a partnership may require its property to be applied to the discharge

of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

5473. (§ 3195.) *What property is partnership property by presumption.*—Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.

MUTUAL OBLIGATION OF PARTNERS.

Section 5474. Partners trustees for each other.

“ 5475. *Good faith to be observed between them.*

“ 5476. *Mutual liability of partners to account.*

“ 5477. *No compensation for services to firm.*

5474. (§ 3200.) *Partners trustees for each other.*—The relations of partners are confidential. They are trustees for each other within the meaning of chapter I., of the title on trusts, and their obligations as such trustees are defined by that chapter.

5475. (§ 3201.) *Good faith to be observed between them.*—In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his co-partners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

Richards v. Fraser, 122 Cal. 460; 55 Pac. 246.

5476. (§ 3202.) *Mutual liability of partners to account.*—Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

5477. (§ 3203.) *No compensation for services to firm.*—A partner is not entitled to any compensation for services rendered by him to the partnership, unless there is an agreement to that effect.

Nevills v. Moore M. Co., 135 Cal. 564; 67 Pac. 1054.

ARTICLE IV.

RENUNCIATION OF PARTNERSHIP.

Section 5478. Renunciation of future profits exonerates from liability.

“ 5479. *Effect of renunciation.*

5478. (§ 3210.) *Renunciation of future profits exonerates from liability.*—A partner may exonerate himself from all future liability to a third person, on account of the partnership, by re-

nouncing, in good faith, all participation in its future profits, and giving notice to such third person and to his own co-partners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

5479. (§ 3211.) *Effect of renunciation.*—After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his co-partners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

- ARTICLE I. WHAT IS A GENERAL PARTNERSHIP.
 II. POWERS AND AUTHORITY OF PARTNERS.
 III. MUTUAL OBLIGATIONS OF PARTNERS.
 IV. LIABILITY OF PARTNERS.
 V. TERMINATION OF PARTNERSHIP.
 VI. LIQUIDATION.
 VII. OF THE USE OF FICTITIOUS NAMES.

ARTICLE I.

WHAT IS A GENERAL PARTNERSHIP.

5480. (§ 3220.) Every partnership that is not formed in accordance with the law concerning special or mining partnerships, and every special partnership so far only as the general partners are concerned, is a general partnership.

ARTICLE II.

POWERS AND AUTHORITY OF PARTNERS.

- Section 5481. Power of majority of partners.*
 “ 5482. *Authority of individual partner.*
 “ 5483. *What authority partner has not.*
 “ 5484. *Partner's acts in bad faith, when ineffectual.*

5481. (§ 3230.) *Power of majority of partners.*—Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

5482. (§ 3231.) *Authority of individual partner.*—Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing.

Hefferlin v. Karlman, 29 Mont. 146; 74 Pac. 203.

5483. (§ 3232.) *What authority partner has not.*—A partner, as such, has not authority to do any of the following acts, unless his co-partners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors.
2. To dispose of the good will of the business.
3. To dispose of the whole of the partnership property at once.
4. To do any act which would make it impossible to carry on the ordinary business of the partnership.
5. To confess a judgment.
6. To submit a partnership claim to arbitration.
7. To do any other act not within the scope of the preceding section.

Doll v. Hennessy M. Co., 33 Mont. 87; 81 Pac. 626. A sale of the stock in trade of a partnership to a stranger is void as to the nonassenting partner's interest in the property sold, and both purchaser and seller may be held liable by

the nonassenting partner. Such sale is a violation of subdivision 3 of this section.

Merchants Co v. Sterling, 124 Cal. 432; 57 Pac. 468.

5484. (§ 3233.) *Partner's acts in bad faith, when ineffectual.*—A partner is not bound by any act of a co-partner, in bad faith toward him, though the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

Hefferlin v. Karlman, 29 Mont. 146; 74 Pac. 203.

ARTICLE III.

MUTUAL OBLIGATIONS OF PARTNERS.

Section 5485. Profits of individual partner.

“ 5486. *In what business partner may not engage.*

“ 5487. *In what he may engage.*

“ 5488. *Must account to firm for profits.*

5485. (§ 3240.) *Profits of individual partner.*—All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

Peasley v. Berry, 33 Mont. 481; 84 Pac. 792.

5486. (§ 3241.) *In what business partner may not engage.*—A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it

Bremner v. Leavitt, 109 Cal. 132; 41 Pac. 859.

5487. (§ 3242.) *In what he may engage.*—A partner may engage in any separate business, except as otherwise provided by the last two sections.

5488. (§ 3243.) *Must account to firm for profits.*—A general partner transacting business contrary to the provisions of this article, may be required by any co-partner to account to the partnership for the profits of such business.

ARTICLE IV.

LIABILITY OF PARTNERS.

Section 5489. Liability of partners to third persons.

“ 5490. *Liability for each other's acts as agents.*

“ 5491. *Liability of one held out as partner.*

“ 5492. *No one liable as partner unless partner or held out as such.*

5489. (§ 3250.) *Liability of partners to third persons.*—Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Muth v. Goddard, 28 Mont. 246; 72 Pac. 623. Stuart v. Adams, 89 Cal. 370; 26 Pac. 970.

Hefferlin v. Karlman, 29 Mont. 139; 74 Pac. 203.

5490. (§ 3251.) *Liability for each other's acts as agents.*—The liability of general partners for each other's acts is defined by the title on agency.

5491. (§ 3252.) *Liability of one held out as partner.*—Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

Beasley v. Berry, 33 Mont. 481; 84 Pac. 792. Nofsinger v. Goldman, 122 Cal. 614; 55 Pac. 425.

5492. (§ 3253.) *No one liable as partner unless partner or held out as such.*—No one is liable as a partner who is not such in fact, except as provided in the last section.

Beasley v. Berry, 33 Mont. 481; 84 Pac. 792.

ARTICLE V.

TERMINATION OF PARTNERSHIP.

Section 5493. Duration of partnership.

“ 5494. *Total dissolution of partnership.*

“ 5495. *Partial dissolution.*

“ 5496. *Partner entitled to dissolution.*

“ 5497. *Notice of termination.*

“ 5498. *Notice by change of name.*

5493. (§ 3260.) *Duration of partnership.*—If no term is prescribed by agreement for its dissolution, a general partnership continues until dissolved by a partner or by operation of law.

5494. (§ 3261.) *Total dissolution of partnership.*—A general partnership is dissolved as to all the partners:

1. By the lapse of the time prescribed by agreement for its duration.
2. By the expressed will of any partner, if there is no such agreement.
3. By the death of a partner.
4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property.
5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,
6. By a judgment of dissolution.

Chapman v. Hughes, 104 Cal. 305; 37 Pac. 1048.

5495. (§ 3262.) *Partial dissolution*.—A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his co-partners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

5496. (§ 3263.) *Partner entitled to dissolution*.—A general partner is entitled to a judgment of dissolution;

1. When he, or another partner, becomes legally incapable of contracting.
2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,
3. When the business of the partnership can be carried on only at a permanent loss.

5497. (§ 3264.) *Notice of termination*.—The liability of a general partner for the acts of his co-partners, continues, even after a dissolution of the co-partnership, in favor of persons who have dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business, if a newspaper is there published, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

Dellapiazza v. Foley, 112 Cal. 382; 44 Pac. 727.

5498. (§ 3265.) *Notice by change of name*.—A change of the partnership name, which plainly indicates the withdrawal of a partner, is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

ARTICLE VI.

LIQUIDATION.

Section 5499. Powers of partners after dissolution.

“ 5500. *Who may act in liquidation.*

“ 5501. *Who may not act in liquidation.*

“ 5502. *Powers of partners in liquidation.*

“ 5503. *What partner may do in liquidation.*

5499. (§ 3270.) *Powers of partners after dissolution.*—After the dissolution of a partnership, the powers and authority of the partners are only such as are prescribed by this article.

5500. (§ 3271.) *Who may act in liquidation.*—Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

5501. (§ 3272.) *Who may act in liquidation.*—If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof.

5502. (§ 3273.) *Powers of partners in liquidation.*—A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

Berson v. Ewing, 84 Cal. 92; 23 Pac. 1112.

5503. (§ 3274.) *What partners may do in liquidation.*—A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm, by an acknowledgement when an action thereon is barred under the provisions of the Code of Civil Procedure

ARTICLE VII.

OF THE USE OF FICTITIOUS NAMES.

Section 5504. Fictitious name.

“ 5505. *Certificate, when to be filed.*

“ 5506. *New certificate on change of partner.*

“ 5507. *Register of such firms to be kept by county clerk.*

“ 5508. *Certified copies of register, and proof of publication, to be evidence.*

“ 5509. *Individual using fictitious name in business must file certificate.*

5504. (§ 3280.) *Fictitious name.*—Every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners

in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

Guiterman v. Wishon, 21 Mont. 463; 54 Pac. 568. *A. Guiterman, S. A. Guiterman and L. A. Guiterman* were doing business under the firm name of *Guiterman Bros.* This was not a fictitious

name, or a designation not showing the persons interested as partners.

Lander v. Sheehan, 32 Mont. 28; 79 Pac. 407.

North v. Moore, 135 Cal. 623; 67 Pac. 1037.

5505. (§ 3281.) *Certificate, when to be filed.*—The certificate filed with the clerk, as provided in § 5504 (3280), must be signed by the partners and acknowledged before some officer authorized to take acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section, must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed, and the publication made within six months after the passage of this code. Persons doing business as partners contrary to the provisions of this article, or any assigns thereof, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this state, until they have first filed the certificate and made the publication herein required.

Lander v. Sheehan, 32 Mont. 28; 79 Pac. 407.

North v. Moore, 135 Cal. 623; 67 Pac. 1037.

5506. (§ 3282.) *New certificate on change of partner.*—On every change of the members of a partnership transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the county clerk, and a new publication made, as required by this article, on the formation of such partnership.

5507. (§ 3283.) *Register of such firms to be kept by county clerk.*—Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership, and of each partner therein.

5508. (§ 3284.) *Certified copies of register, and proof of publication, to be evidence.*—Copies of the entries of a county clerk, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidences of the facts therein stated.

5509. (§ 3285.) *Individual using fictitious name in business must file certificate.*—Every individual now transacting business, or who may hereafter transact business, in this state under a fictitious name, or a style or designation purporting to be a firm name or corporate name, shall file and publish, or cause to be filed and published, the certificates described in sections 5504 (3280), 5505 (3281) and 5506 (3282) of the Civil Code of the State of Montana. Anyone doing business contrary to the provisions of this Section shall be subject to the disabilities and provisions of section 5505 (3281) of this code. [Act approved March 7, 1907.] (10th Sess. Chap. 150.)

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I. FORMATION OF PARTNERSHIP.

II. POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

III. LIABILITY OF PARTNERS.

IV. ALTERATION AND DISSOLUTION OF THE PARTNERSHIP.

ARTICLE I.

FORMATION OF PARTNERSHIP.

Section 5510. *Formation of special partnership.*

“ 5511. *Of what to consist.*

“ 5512. *Certified statement.*

“ 5513. *Acknowledged and recorded. False statements.*

“ 5514. *Affidavit as to sums contributed.*

“ 5515. *No partnership until compliance.*

“ 5516. *Certificate to be published.*

“ 5517. *Affidavit of publication filed.*

“ 5518. *Renewal of special partnership.*

5510. (§ 3290.) *Formation of special partnership.*—A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance.

5511. (§ 3291.) *Of what to consist.*—A special partnership may consist of one or more persons called general partners, and one or more persons called special partners.

5512. (§ 3292.) *Certified statement.*—Persons desirous of forming a special partnership must severally sign a certificate stating:

1. The name under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.

3. The names of all the partners, and the residences, specifying which are general and which are special partners.

4. The amount of capital which each special partner has contributed to the common stock.

5. The periods at which such partnership will begin and end.

5513. (§ 3293.) *Acknowledged and recorded. False statement.*—Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, and filed and recorded in the office of the county clerk of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the county clerk in whose office it is recorded, must be filed and recorded in like manner, in the office of the county clerk of every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof

5514. (§ 3294.) *Affidavit as to sums contributed.*—An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed and recorded in the same office with the original certificate

5515. (§ 3295.) *No partnership until compliance.*—No special partnership is formed until the provisions of the last five sections are complied with.

5516. (§ 3296.) *Certificate to be published.*—The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is recorded, and if no newspaper is there printed, then in a newspaper in the county nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of recording the certificate. In case such publication is not so made, the partnership must be deemed general.

5517. (§ 3297.) *Affidavit of publication filed.*—An affidavit of the making of the publication mentioned in the preceding section, made by the printer, publisher, or chief clerk of the newspaper in which such publication is made, may be filed with the county clerk with whom the original certificate was recorded, and is presumptive evidence of the facts therein stated.

5518. (§ 3298.) *Renewal of special partnership.*—Every renewal or continuance of a special partnership must be certified, recorded, verified, and published in the same manner as upon its original formation. If not renewed, it shall be deemed a general partnership.

ARTICLE II.

POWERS, RIGHTS, AND DUTIES OF THE PARTNERS.

Section 5519. Who to do business.

“ 5520. *Special partners may advise.*

“ 5521. *May loan money. Insolvency.*

“ 5522. *General partners may sue and be sued.*

“ 5523. *Withdrawal of capital.*

“ 5524. *Interest and profits.*

“ 5525. *Result of withdrawing capital.*

“ 5526. *Preferential transfer void.*

5519. (§ 3310.) *Who to do business.*—The general partners only have authority to transact the business of a special partnership.

5520. (§ 3311.) *Special partner may advise.*—A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

5521. (§ 3312.) *May loan money. Insolvency.*—A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it, must be postponed until all other creditors are satisfied.

5522. (§ 3313.) *General partners may sue and be sued.*—In all matters relating to special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

5523. (§ 3314.) *Withdrawal of capital.*—No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

5524. (§ 3315.) *Interest and profits.*—A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

5525. (§ 3316.) *Result of withdrawing capital.*—If a special partner withdraws from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

5526. (§ 3317.) *Preferential transfer void.*—Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with like intent, is in like manner void.

ARTICLE III.

LIABILITY OF PARTNERS.

Section 5527. *Liability of partners.*

“ 5528. *Of special partners.*

“ 5529. *Liability for unintentional act.*

“ 5530. *Who may question existence of special partnership.*

5527. (§ 3330.) *Liability of partners.*—The general partners in a special partnership are liable to the same extent as partners in a general partnership.

5528. (§ 3331.) *Of special partners.*—The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has wilfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm.

2. If he has wilfully interfered with the business of the firm, except as permitted in article II. of this chapter, he is liable in like manner; or,

3. If he has wilfully joined in or assented to an act contrary to any of the provisions of article II., of this chapter, he is liable in like manner.

5529. (§ 3332.) *Liability for unintentional act.*—When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice

5530. (§ 3333.) *Who may question existence of special partnership.*—One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by article I. of this chapter.

ARTICLE IV.

ALTERATION AND DISSOLUTION OF THE PARTNERSHIP.

Section 5531. When special partnership becomes general.

“ 5532. *How new special partners may be admitted.*

“ 5533. *Dissolution of special partnerships. Notice.*

“ 5534. *When special partner becomes general partner.*

5531. (§ 3340.) *When special partnership becomes general.*
—A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the county clerk, with whom the original certificate of the partnership was filed and recorded, and notice thereof published, as provided in article I., of this chapter, for the publication of the certificate.

5532. (§ 3341.) *How new special partners may be admitted.*
—New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged, or proved, according to the provisions of article I., of this chapter, and filed and recorded with the county clerk, with whom the original certificate of the partnership was filed.

5533. (§ 3342.) *Dissolution of special partnerships. Notice.*
—A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the county clerk, with whom the original certificate was recorded, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

5534. (§ 3343.) *When special partner liable as general partner.*—The business of the partnership shall be conducted under a firm name, in which the names of the general partners only shall be inserted. If the name of any special partner shall be used in such firm name with his consent, or if he shall personally make any contract respecting or concerning the partnership with any person except the general partner, he becomes liable as a general partner.

CHAPTER IV.

MINING PARTNERSHIPS.

Section 5535. When a mining partnership exists.

“ 5536. *Express agreement not necessary to constitute.*

“ 5537. *Profits and losses, how shared.*

“ 5538. *Lien of partners.*

Section 5539. Mine—partnership property.

“ 5540. *Partnership not dissolved by sale of interest.*

“ 5541. *Purchaser takes, subject to liens, unless, etc.*

“ 5542. *Takes with notice of lien, when.*

“ 5543. *Contract in writing, when binding.*

“ 5544. *Owners of majority of shares govern.*

5535. (§ 3350.) *When a mining partnership exists.*—A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom, actually engage in working the same.

Anaconda M. Co. v. B. & M. Co., 17 Mont. 519; 43 Pac. 924. A mining partnership exists when there is an ownership of the interests in a mine by two or more persons for the purpose of working it, and when such owners actually engage in working the mine.

Pac. 261. Mining partnerships differing from general partnerships were recognized by the decisions of this court before the enactment of this section July 1, 1895.

Prince v. Lamb, 128 Cal. 127; 60 Pac. 689.

Congdon v. Olds, 18 Mont. 489; 46

5536. (§ 3351.) *Express agreement not necessary to constitute.*—An express agreement to become partners or to share the profits and losses of mining, is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

Anaconda M. Co. v. B. & M. Co., 17 Mont. 519; 43 Pac. 924.

Ferris v. Baker, 127 Cal. 520; 59 Pac. 937.

5537. (§ 3352.) *Profits and losses, how shared.*—A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

Stuart v. Adams, 89 Cal. 371; 26 Pac. 970.

5538. (§ 3353.) *Lien of partners.*—Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof, and for money advanced by him for its uses. This lien exists, notwithstanding there is an agreement among the partners that it must not.

Stuart v. Adams, 89 Cal. 371; 26 Pac. 970.

5539. (§ 3354.) *Mine—partnership property.*—The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

5540. (§ 3355.) *Partnership not dissolved by sale of interest.*—One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser, from the date of his purchase, becomes a member of the partnership.

5541. (§ 3356.) *Purchaser takes, subject to liens, unless, etc.*—A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof, or advances made for the benefit of the partnership, unless he purchased in good faith, for a valuable consideration, without notice of such lien.

5542. (§ 3357.) *Takes with notice of lien, when.*—The purchaser of the interest of a partner in a mine when the partnership is engaged in working it, takes with notice of all liens resulting from the relation of the partners to each other, and to the creditors of the partnership.

5543. (§ 3358.) *Contract in writing, when binding.*—No member of a mining partnership or other agent or manager thereof, can, by a contract in writing, bind the partnership, except by express authority derived from the members thereof.

5544. (§ 3359.) *Owners of majority of shares govern.*—The decision of the members owning a majority of the shares of interests in a mining partnership binds it in the conduct of its business.

Anaconda M. Co. v. B. & M. Co., 17
Mont. 522; 43 Pac. 924.

Stuart v. Adams, 89 Cal. 371; 26 Pac.
970.

TITLE XI.

INSURANCE.

- CHAPTER I. INSURANCE IN GENERAL.
II. FIRE INSURANCE.
III. LIFE AND HEALTH INSURANCE.

CHAPTER I.

INSURANCE IN GENERAL.

- ARTICLE I. DEFINITION OF INSURANCE.
II. WHAT MAY BE INSURED.
III. PARTIES.
IV. INSURABLE INTEREST.
V. CONCEALMENT AND REPRESENTATION.
VI. THE POLICY.
VII. WARRANTIES.
VIII. PREMIUMS.
IX. LOSS.
X. NOTICE OF LOSS.
XI. DOUBLE INSURANCE.
XII. REINSURANCE.

ARTICLE I.

DEFINITION OF INSURANCE.

5545. (§ 3370.) Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

Union Co. v. American Co., 107 Cal. 330; 40 Pac. 431.

ARTICLE II.

WHAT MAY BE INSURED.

Section 5546. What events may be insured against.

“ 5547. *Insurance of lottery or lottery prize unauthorized.*

“ 5548. *Usual kinds of insurance.*

“ 5549. *All subject to this chapter.*

5546. (§ 3380.) *What events may be insured against.*—Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

Union Co. v. American Co., 107 Cal. 330; 40 Pac. 431.

5547. (§ 3381.) *Insurance of lottery or lottery prize unauthorized.*—The preceding section does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

5548. (§ 3382.) *Usual kinds of insurance.*—The usual kinds of insurance are:

1. Marine insurance.
2. Fire insurance.
3. Life insurance.
4. Health insurance; and,
5. Accident insurance.

5549. (§ 3383.) *All subject to this chapter.*—All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.

PARTIES TO THE CONTRACT.

Section 5550. Designation of parties.

“ 5551. *Who may insure.*

“ 5552. *Who may be insured.*

“ 5553. *Assignment to mortgagee of thing insured.*

“ 5554. *New contract between insurer and assignee.*

5550. (§ 3390.) *Designation of parties.*—The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

5551. (§ 3391.) *Who may insure.*—Any one capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents, and others.

5552. (§ 3392.) *Who may be insured.*—Any one except a public enemy may be insured.

5553. (§ 3393.) *Assignment to mortgagee of thing insured.*—Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

Sierra Co. v. Butler, 136 Cal. 547; 69 Pac. 418.

5554. (§ 3394.) *New contract between insurer and assignee.*—If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.

INSURABLE INTEREST.

- Section 5555. *Insurable interest, what.*
 “ 5556. *In what may consist*
 “ 5557. *Interest of carrier or depositary.*
 “ 5558. *Mere expectancies.*
 “ 5559. *Measure of interest in property.*
 “ 5560. *Insurance without interest illegal.*
 “ 5561. *When interest must exist.*
 “ 5562. *Effect of transfer.*
 “ 5563. *Transfer after loss.*
 “ 5564. *Exception in the case of several subjects in one policy.*
 “ 5565. *In case of death of insurer.*
 “ 5566. *In the case of transfer between co-tenants.*
 “ 5567. *Policy, when void.*

5555. (§ 3400.) *Insurable interest, what.*—Any interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

5556. (§ 3401.) *In what may consist.*—An insurable interest in property may consist in:

1. An existing interest.
2. An inchoate interest founded on an existing interest; or,
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

5557. (§ 3402.) *Interest of carrier or depositary.*—A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

5558. (§ 3403.) *Mere expectancies.*—A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

5559. (§ 3404.) *Measure of interest in property.*—The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

5560. (§ 3405.) *Insurance without interest, illegal.*—The sole object of insurance is the indemnity of the insured, and if he has no insurable interest, the contract is void.

5561. (§ 3406.) *When interest must exist.*—An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

5562. (§ 3407.) *Effect of transfer.*—Except in the cases specified in the next four sections, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

5563. (§ 3408.) *Transfer after loss.*—A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnify for the loss.

5564. (§ 3409.) *Exception in the case of several subjects in one policy.*—A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

5565. (§ 3410.) *In case of the death of the insurer.*—A change of interest, by will or succession, or the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

5566. (§ 3411.) *In the case of transfer between co-tenants.*—A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

5567. (§ 3412.) *Policy, when void.*—Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming, or wagering, is void.

ARTICLE V.

CONCEALMENT AND REPRESENTATION.

- Section 5568. Concealment, what.*
 “ 5569. *Effect of concealment.*
 “ 5570. *What must be disclosed.*
 “ 5571. *Matters which need not be communicated without inquiry.*
 “ 5572. *Test of materiality.*
 “ 5573. *Matters which each is bound to know.*
 “ 5574. *Waiver of communication.*
 “ 5575. *Interest of insured.*
 “ 5576. *Fraudulent warranty.*
 “ 5577. *Matters of opinion.*
 “ 5578. *Representation, what.*
 “ 5579. *When made.*
 “ 5580. *How interpreted.*
 “ 5581. *Representation as to future.*
 “ 5582. *How may affect policy.*
 “ 5583. *When may be withdrawn.*
 “ 5584. *Time intended by representation.*
 “ 5585. *Representing information.*
 “ 5586. *Falsity.*
 “ 5587. *Effect of falsity.*
 “ 5588. *Materiality.*
 “ 5589. *Solicitor deemed agent of company.*
 “ 5590. *Application of provisions of this article.*

5568. (§ 3420.) *Concealment, what.*—A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

Hart v. British I. Co., 80 Cal. 443; 22 Pac. 302.

5569. (§ 3421.) *Effect of concealment.*—A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

Hart v. British I. Co., 80 Cal. 443; 22 Pac. 302.

5570. (§ 3422.) *What must be disclosed.*—Each party to a contract of insurance must communicate to the other, in good faith, all the facts within his knowledge which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

Hart v. British I. Co., 80 Cal. 443; 22 Pac. 302.

5571. (§ 3423.) *Matters which need not be communicated without inquiry.*—Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows.

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant.

3. Those of which the other waives communication.

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk, excepted from the policy, and which are not otherwise material.

Bayley v. Employers' Co., 125 Cal. 350; 58 Pac. 7.

5572. (§ 3424.) *Test of materiality.*—Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

5573. (§ 3425.) *Matters which each is bound to know.*—Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated, and all general usages of trade.

5574. (§ 3426.) *Waiver of communication.*—The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

5575. (§ 3427.) *Interest of insured.*—Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by § 5592 (3451).

5576. (§ 3428.) *Fraudulent warranty.*—An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

5577. (§ 3429.) *Matters of opinion.*—Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

5578. (§ 3430.) *Representation, what.*—A representation may be oral or written.

5579. (§ 3431.) *When made.*—A representation may be made at the same time with issuing the policy, or before it.

5580. (§ 3432.) *How interpreted.*—The language of a representation is to be interpreted by the same rules as the language of contracts in general.

5581. (§ 3433.) *Representation as to future.*—A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

5582. (§ 3434.) *How may effect policy.*—A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

5583. (§ 3435.) *When may be withdrawn.*—A representation may be altered or withdrawn before the insurance is affected, but not afterwards.

5584. (§ 3436.) *Time intended by representation.*—The completion of the contract of insurance is the time to which a representation must be presumed to refer.

5585. (§ 3437.) *Representing information.*—When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

5586. (§ 3438.) *Falsity.*—A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

5587. (§ 3439.) *Effect of falsity.*—If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract, from the time when the representation becomes false.

5588. (§ 3440.) *Materiality.*—The materiality of a representation is determined by the same rule as the materiality of a concealment.

5589. *Solicitor deemed agent of the company.*—Any person who shall solicit an application for insurance upon the life of another shall, in any controversy between the assured or his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company and not the agent of the assured. [Act approved February 25, 1907.] (10th Sess. Chap. 30.)

5590. (§ 3441.) *Application of provisions of this article.*—The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

ARTICLE VI.

THE POLICY.

- Section 5591. *Policy, what.*
 “ 5592. *What must be specified in a policy.*
 “ 5593. *Policy must contain whole contract.*
 “ 5594. *Whose interest is covered.*
 “ 5595. *Insurance by agent or trustee.*
 “ 5596. *Insurance by part owner.*
 “ 5597. *General terms.*

- Section 5598. Successive owners.*
“ 5599. *Transfer of the thing insured.*
“ 5600. *Open and valued policies.*
“ 5601. *Open policy, what.*
“ 5602. *Valued policy, what.*
“ 5603. *Running policy, what.*
“ 5604. *Effect of receipt.*
“ 5605. *Agreement not to transfer.*

5591. (§ 3450.) *Policy, what.*—The written instrument in which a contract of insurance is set forth, is called a policy of insurance.

5592. (§ 3451.) *What must be specified in a policy.*—A policy of insurance must specify :

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in the property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue.

Davis v. Phoenix I. Co., 111 Cal. 411; 43 Pac. 1115.

5593. *Policy must contain the whole contract.*—Every policy of insurance issued or delivered within this State on or after the first day of January, Nineteen Hundred and Eight, by any life insurance corporation doing business within the State shall contain the entire contract between the parties. [*Act approved February 26, 1907.*] (10th Sess. Chap. 39.)

5594. (§ 3452.) *Whose interest is covered.*—When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

5595. (§ 3453.) *Insurance by agent or trustee.*—When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

5596. (§ 3454.) *Insurance by part owner.*—To render an insurance, effected by one partner or part owner, applicable to the interest of his co-partners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

5597. (§ 3455.) *General terms.*—When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he can claim the benefit of the policy who can show that it was intended to include him.

5598. (§ 3456.) *Successive owners.*—A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

5599. (§ 3457.) *Transfer of the thing insured.*—The mere transfer of a thing insured does not transfer the policy, but suspends it till the same person becomes the owner of both the policy and the thing insured.

5600. (§ 3458.) *Open and valued policies.*—A policy is either open or valued.

5601. (§ 3459.) *Open policy, what.*—An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

5602. (§ 3460.) *Valued policy, what.*—A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Wilmington Co. v. O'Neil, 98 Cal. 7; 32 Pac. 705.

5603. (§ 3461.) *Running policy, what.*—A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

5604. (§ 3462.) *Effect of receipt.*—An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Palmer v. Continental I. Co., 132 Cal. 70; 64 Pac. 97.

5605. (§ 3463.) *Agreement not to transfer.*—An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.

WARRANTIES.

- | | | |
|----------------|--------------|---|
| <i>Section</i> | <i>5606.</i> | <i>Warranty, express or implied.</i> |
| " | <i>5607.</i> | <i>Form.</i> |
| " | <i>5608.</i> | <i>Warranty, in what contained.</i> |
| " | <i>5609.</i> | <i>Past, present and future warranties.</i> |
| " | <i>5610.</i> | <i>Warranty as to past or present.</i> |
| " | <i>5611.</i> | <i>Warranty as to the future.</i> |
| " | <i>5612.</i> | <i>Performance excused.</i> |
| " | <i>5613.</i> | <i>What acts avoid the policy.</i> |
| " | <i>5614.</i> | <i>Policy may provide for avoidance.</i> |
| " | <i>5615.</i> | <i>Breach without fraud.</i> |

5606. (§ 3470.) *Warranty, express or implied.*—A warranty is either express or implied.

5607. (§ 3471.) *Form.*—No particular form of words is necessary to create a warranty.

5608. (§ 3472.) *Warranty, in what contained.*—Every express warranty, made at or before the execution of the policy, must be contained in the policy itself, or in another instrument signed by the insured, and referred to in the policy, as making a part of it.

5609. (§ 3473.) *Past present, and future warranties.*—A warranty may relate to the past, the present, the future, or to any or all of these.

5610. (§ 3474.) *Warranty as to past or present.*—A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

National Bank v. Union I. Co., 88 Cal. 504; 26 Pac. 509.

5611. (§ 3475.) *Warranty as to the future.*—A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such an act or omission shall take place.

Young v. Pacific Co., 137 Cal. 597; 70 Pac. 660.

5612. (§ 3476.) *Performance excused.*—When before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

5613. (§ 3477.) *When acts avoid the policy.*—The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

5614. (§ 3478.) *Policy may provide for avoidance.*—A policy may declare that a violation of specified provisions shall avoid it, otherwise the breach of immaterial provision does not avoid the policy.

Bastian v. British Co., 143 Cal. 291; 77 Pac. 63.

5615. (§ 3479.) *Breach without fraud.*—A breach of warranty, without fraud, merely exonerates the insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk.

ARTICLE VIII.

THE PREMIUM.

Section 5616. *When premium is earned.*

“ 5617. *Return of premium.*

“ 5618. *When none allowed.*

“ 5619. *Return for fraud.*

“ 5620. *Over-insurance by several insurers.*

“ 5621. *Contribution.*

“ 5622. *Proportionate contribution.*

5616. (§ 3490.) *When premium is earned.*—An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

Joshua Works v. Insurance Co., 86 Cal. 252; 24 Pac. 1018.

5617. (§ 3491.) *Return of premium.*—A person insured is entitled to a return of premium, as follows:

1. To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

2. Where the insurance is made for a definite period of time and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

5618. (§ 3492.) *When none allowed.*—If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums so far as that particular risk is concerned.

5619. (§ 3493.) *Return for fraud.*—A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud the insurer never incurred any liability under the policy.

5620. (§ 3494.) *Over-insurance by several insurers.*—In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

5621. (§ 3495.) *Contribution.*—When an over-insurance is effected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

5622. (§ 3496.) *Proportionate contribution.*—When an over-insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.

LOSS.

Section 5623. Perils, remote and proximate.

“ 5624. *Loss incurred in rescue from peril.*

“ 5625. *Excepted perils.*

“ 5626. *Negligence and fraud.*

5623. (§ 3500.) *Perils, remote and proximate.*—An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

5624. (§ 3501.) *Loss incurred in rescue from peril.*—An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

5625. (§ 3502.) *Excepted perils.*—Where a peril is specially excepted in a contract of insurance, a loss which would not have occurred but for such peril is thereby excepted; although the immediate cause of the loss was a peril which was not excepted.

5626. (§ 3503.) *Negligence and fraud.*—An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

ARTICLE X.

NOTICE OF LOSS.

Section 5627. Notice of loss.

“ 5628. *Preliminary proofs.*

“ 5629. *Waiver of defects in notice, etc.*

“ 5630. *Waiver of delay.*

“ 5631. *Certificate, when dispensed with.*

5627. (§ 3510.) *Notice of loss.*—In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

5628. (§ 3511.) *Preliminary proofs.*—When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

5629. (§ 3512.) *Waiver of defects in notice, etc.*—All defects in a notice of loss, or in preliminary proofs thereof which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

Greiss v. State I. Co., 98 Cal. 243; 33 Pac. 195.

5630. (§ 3513.) *Waiver of delay.*—Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

5631. (§ 3514.) *Certificate, when dispensed with.*—If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

Noone v. Transatlantic Co., 88 Cal. 157; 26 Pac. 103.

ARTICLE XI.

DOUBLE INSURANCE.

Section 5632. Double insurance.

“ 5633. *Contribution in case of double insurance.*

5632. (§ 3520.) *Double insurance.*—A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

5633. (§ 3521.) *Contribution in case of double insurance.*—In case of double insurance, the several insurers are liable to pay losses thereon as follows:

1. In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

2. In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably.

ARTICLE XII.

REINSURANCE.

Section 5634. Reinsurance, what.

“ 5635. *Disclosures required.*

“ 5636. *Reinsurance presumed to be against liability.*

“ 5637. *Original insured has no interest.*

5634. (§ 3530.) *Reinsurance, what.*—A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

Whitney v. American I. Co., 127 Cal. 470; 59 Pac. 897.

5635. (§ 3531.) *Disclosures required.*—Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

5636. (§ 3532.) *Reinsurance presumed to be against liability.*—A reinsurance is presumed to be a contract of indemnity against liability, and not merely against damage.

Union I. Co. v. American I. Co., 107 Cal. 330; 40 Pac. 431.

5637. (§ 3533.) *Original insured has no interest.*—The original insured has no interest in a contract of reinsurance.

CHAPTER II.

MARINE INSURANCE.

5638. (§ 3540.) *Definition of marine insurance.*—Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

CHAPTER III.

FIRE INSURANCE.

Section 5639. Alteration increasing risk.

“ 5640. *Alteration not increasing risk.*

“ 5641. *Acts of the insured.*

“ 5642. *Measure of the indemnity.*

5639. (§ 3550.) *Alteration increasing risk.*—An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Slinkard v. Manchester Co., 122 Cal. 599; 55 Pac. 417.

5640. (§ 3551.) *Alteration not increasing risk.*—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Slinkard v. Manchester Co., 122 Cal. 599; 55 Pac. 417.

5641. (§ 3552.) *Acts of the insured.*—A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

5642. (§ 3553.) *Measure of the indemnity.*—If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense, at the time that the loss is payable,

of replacing the thing lost or injured, in the condition in which it was at the time of the injury; but a valuation, fraudulent in fact, entitles the insurer to rescind the contract.

CHAPTER IV.

LIFE, HEALTH AND ACCIDENT INSURANCE.

Section 5643. Insurance upon life, when payable.

“ 5644. *Insurable interest.*

“ 5645. *Assignee, etc., of life policy need have no interest.*

“ 5646. *Notice of transfer.*

“ 5647. *Measure of indemnity.*

5643. (§ 3560.) *Insurance upon life, when payable.*—An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

5644. (§ 3561.) *Insurable interest.*—Every person has an insurable interest in the life, health and freedom from accidents:

1. Of himself.
2. Of any person on whom he depends wholly or in part for education or support.
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services of which death, illness or injury caused by accident might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest vested in him depends.

5645. (§ 3562.) *Assignee, etc., of life policy need have no interest.*—A policy of insurance upon life, health or freedom from accident may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

5646. (§ 3563.) *Notice of transfer.*—Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance, upon life, health or freedom from accident, unless thereby expressly required.

5647. (§ 3564.) *Measure of indemnity.*—Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life, health or freedom from accident is the sum fixed in the policy.

TITLE XII.

INDEMNITY.

Section 5648. *Indemnity, what.*

“ 5649. *Indemnity for a future wrongful act void.*

“ 5650. *Indemnity for a past wrongful act void.*

“ 5651. *Indemnity extends to acts of agents.*

“ 5652. *Indemnity to several.*

“ 5653. *Persons indemnifying liable jointly or severally with person indemnified.*

“ 5654. *Rules for interpreting agreement of indemnity.*

“ 5655. *When person indemnifying is a surety.*

5648. (§ 3580.) *Indemnity, what.*—Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

5649. (§ 3581.) *Indemnity for a future wrongful act void.*—An agreement to indemnify a person against an act thereafter to be done is void, if the act be known by such person, at the time of doing it, to be unlawful.

5650. (§ 3582.) *Indemnity for a past wrongful act valid.*—An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony.

5651. (§ 3583.) *Indemnity extends to acts of agents.*—An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences, but also to those of his agents.

5652. (§ 3584.) *Indemnity to several.*—An agreement to indemnify several persons applies to each, unless a contrary intention appears.

5653. (§ 3585.) *Persons indemnifying liable jointly or severally with person indemnified.*—One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.

5654. (§ 3586.) *Rules for interpreting agreement of indemnity.*—In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims, or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of a reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter, suffered by him in good faith, is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

Butte v. Cook, 29 Mont. 92; 74 Pac. 68. The burden is on the indemnifying person in a suit on the contract of indemnity to rebut the presumption raised by this section. Where the names of two sureties appear in the body of an in-

demnifying bond, which is signed by one only, the condition of the bond is notice to the obligee.

Showers v. Wadsworth, 81 Cal. 273; 22 Pac. 663.

5655. (§ 3587.) *When person indemnifying is a surety.*—Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety, for whatever he may pay.

TITLE XIII.

GUARANTY.

CHAPTER I. GUARANTY IN GENERAL.

II. SURETYSHIP.

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I. DEFINITION OF GUARANTY.

II. CREATION OF GUARANTY.

III. INTERPRETATION OF GUARANTY.

IV. LIABILITY OF GUARANTORS.

V. CONTINUING GUARANTY.

VI. EXONERATION OF GUARANTORS.

ARTICLE I.

DEFINITION OF GUARANTY.

Section 5656. Guaranty, what.

“ 5657. *Knowledge of principal not necessary to creation of guaranty.*

5656. (§ 3600.) *Guaranty, what.*—A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

Cole M. Co. v. Morton, 24 Mont. 62; 60 Pac. 588. A surety is bound with the principal as an original promisor on the same contract, while a guarantor makes his own separate contract; a surety

makes his contract primarily for the principal, while a guarantor makes his contract mainly for his own benefit.

Kilbride v. Moss, 113 Cal. 434; 45 Pac. 812.

5657. (§ 3601.) *Knowledge of principal not necessary to creation of guaranty.*—A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.

CREATION OF GUARANTY.

Section 5658. Necessity of a consideration.

“ 5659. *Guaranty to be in writing, etc.*

“ 5660. *Engagement to answer for obligation of another, when deemed original.*

“ 5661. *Acceptance of guaranty.*

5658. (§ 3610.) *Necessity of a consideration.*—Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Cole M. Co. v. Morton, 24 Mont. 62; 60 Pac. 588.

Lagomarsino v. Giannini 146 Cal. 547; 80 Pac. 698.

5659. (§ 3611.) *Guaranty to be in writing, etc.*—Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

Kilbride v. Moss, 113 Cal. 434; 45 Pac. 812.

5660. (§ 3612.) *Engagement to answer for obligation of another, when deemed original.*—A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation, in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which

the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety.

3. Where the promise being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor, or upon the consideration that the party receiving it releases the property of another from a levy, or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

McCormick v. Johnson, 31 Mont. 270; 78 Pac. 502. A promise by partners to pay an existing debt of a corporation to another, in consideration of such other

person giving them an agency for sale of his coal, is an original obligation which need not be in writing.

5661. (§ 3613.) *Acceptance of guaranty.*—A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.

INTERPRETATION OF GUARANTY.

Section 5662. *Guaranty of incomplete contract.*

“ 5663. *Guaranty that an obligation is good or collectible.*

“ 5664. *Recovery upon such guaranty.*

“ 5665. *Guarantor's liability upon such guaranty.*

5662. (§ 3620.) *Guaranty of incomplete contract.*—In a guaranty of a contract, the terms of which are not then settled, it is implied that its term shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

5663. (§ 3621.) *Guaranty that an obligation is good or collectible.*—A guaranty to the effect that an obligation is good or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

5664. (§ 3622.) *Recovery upon such guaranty.*—A guaranty, such as is mentioned in the last section, is not discharged by an

omission to take proceedings upon the principal debt, or upon any collateral security for its payment if no part of the debt could have been collected thereby.

5665. (§ 3623.) *Guarantor's liability upon such guaranty.*—In the case mentioned in § 5663 (3621) the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.

LIABILITY OF GUARANTORS.

Section 5666. Guaranty, how construed.

“ 5667. *Liability upon guaranty of payment or performance.*

“ 5668. *Liability upon guaranty of a conditional obligation.*

“ 5669. *Obligation of guarantor cannot exceed that of the principal.*

“ 5670. *Guarantor not liable on an illegal contract.*

5666. (§ 3630.) *Guaranty, how construed.*—A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

Pierce v. Merrill, 128 Cal. 470; 61 Pac. 64.

5667. (§ 3631.) *Liability upon guaranty of payment or performance.*—A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and, without demand or notice.

Pierce v. Merrill, 128 Cal. 470; 61 Pac. 64.

5668. (§ 3632.) *Liability upon guaranty of a conditional obligation.*—Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

5669. (§ 3633.) *Obligation of guarantor cannot exceed that of the principal.*—The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

5670. (§ 3634.) *Guarantor not liable on an illegal contract.*—A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.

CONTINUING GUARANTY.

Section 5671. Continuing guaranty, what.

“ 5672. *Revocation.*

5671. (§ 3640.) *Continuing guaranty, what.*—A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

White Co. v. Courtney, 141 Cal. 677; 75 Pac. 296.

5672. (§ 3641.) *Revocation.*—A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

White Co. v. Courtney, 141 Cal. 676; 75 Pac. 296.

ARTICLE VI.

EXONERATION OF GUARANTORS.

Section 5673. What dealings with debtor exonerates guarantor.

“ 5674. *Void promises.*

“ 5675. *Rescission of alteration.*

“ 5676. *Part performance.*

“ 5677. *Delay of creditor does not discharge guarantor.*

“ 5678. *Guarantor indemnified by the debtor, not exonerated.*

“ 5679. *Discharge of principal by act of law does not discharge guarantor.*

5673. (§ 3650.) *What dealings with debtor exonerates guarantor.*—A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any wise impaired or suspended.

Stanford v. Coram, 26 Mont. 304; 67 Pac. 1012. A guarantor of the payment of a note is relieved from liability when the cashier of the holder, with the knowledge of the holder, accepts as payment from the principal debtor a conveyance

of land, and cancels the note, and executes a note to the holder for the amount of the debt of the principal debtor.

Bateman Brothers v. Mapel, 145 Cal. 244; 78 Pac. 734.

5674. (§ 3651.) *Void promises.*—A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation, or suspend or impair the remedy, within the meaning of the last section.

5675. (§ 3652.) *Rèscission of alteration.*—The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

5676. (§ 3653.) *Part performance.*—The acceptance, by a creditor, of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

5677. (§ 3654.) *Delay of creditor does not discharge guarantor.*—Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

Bank v. Babcock, 94 Cal. 103; 29 Pac. 415.

5678. (§ 3655.) *Guarantor indemnified by the debtor, not exonerated.*—A guarantor who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Ehrman v. Rosenthal, 117 Cal. 497; 49 Pac. 460.

5679. (§ 3656.) *Discharge of principal by act of law does not discharge guarantor.*—A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

- ARTICLE I. WHO ARE SURETIES.
- II. LIABILITY OF SURETIES.
- III. RIGHTS OF SURETIES.
- IV. RIGHTS OF CREDITORS.
- V. LETTER OF CREDIT.

ARTICLE I.

WHO ARE SURETIES.

Section 5680. Surety, what.

“ 5681. *Apparent principal may show that he is surety.*

5680. (§ 3670.) *Surety, what.*—A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

Cole M. Co. v. Morton, 24 Mont. 61; 60 Pac. 588. Where part of an agreement creating an agency was a bond executed to plaintiff by the agent and defendants, conditioned that if the agent failed to perform his duties, and pay

over to plaintiff such sums as might be due him, defendants would pay such sum, not exceeding \$200, defendants were sureties.

McDonald v. Randall, 139 Cal. 253; 72 Pac. 997.

5681. (§ 3671.) *Apparent principal may show that he is surety*—One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

Eppinger v. Kendrick, 114 Cal. 625; 46 Pac. 613.

ARTICLE II.

LIABILITY OF SURETIES.

Section 5682. *Limit of surety's obligation.*

“ 5683. *Rules of interpretation.*

“ 5684. *Judgment against surety does not alter the relation.*

“ 5685. *Surety exonerated by performance or offer of performance.*

“ 5686. *Surety discharged by certain acts of the creditor*

5682. (§ 3680.) *Limit of surety's obligation.*—A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

State v. Court, 22 Mont. 453; 57 Pac. 90. Stay of execution, being a valuable consideration, sureties who execute an undertaking therefor have a right to rely on the letter of their bond, and stand on the entirety of the consideration expressed therein, and their liability cannot be extended by implication. Hewlett v. Beede, 2 C. App. 565; 83 Pac. 1086.

5683. (§ 3681.) *Rules of interpretation.*—In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

State v. Court, 22 Mont. 453; 67 Pac. 90. Alaska Co. v. Hirsch, 119 Cal. 250; 47 Pac. 124.

5684. (§ 3682.) *Judgment against surety does not alter the relation.*—Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

5685. (§ 3683.) *Surety exonerated by performance or offer of performance.*—Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

Randol v. Tatum, 98 Cal. 399; 33 Pac. 433.

5686. (§ 3684.) *Surety discharged by certain acts of the creditor.*—A surety is exonerated:

1. In-like manner with a guarantor.

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

Glenn Co. v. Jones, 146 Cal. 526; 80 Pac. 695.

ARTICLE III.

RIGHTS OF SURETIES.

Section 5687. Surety has rights of guarantor.

“ 5688. *Surety may require the creditor to proceed against the principal.*

“ 5689. *Surety may compel principal to perform obligations, when due.*

“ 5690. *A principal bound to reimburse his surety.*

“ 5691. *The surety acquires the right of the creditor.*

“ 5692. *Surety entitled to benefit of securities held by creditor.*

“ 5693. *The property of principal to be taken first.*

5687. (§ 3690.) *Surety has rights of guarantor.*—A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

Bateman Bros. v. Mapel, 145 Cal. 244; 78 Pac. 734.

5688. (§ 3691.) *Surety may require the creditor to proceed against the principal.*—A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

5689. (§ 3692.) *Surety may compel principal to perform obligations, when due.*—A surety may compel his principal to perform the obligations when due.

5690. (§ 3693.) *A principal bound to reimburse his surety.*—If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section.

5691. (§ 3694.) *The surety acquires the right of the creditor.*—A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

Martin v. DeOrnelas, 139 Cal. 49; 72 Pac. 440.

5692. (§ 3695.) *Surety entitled to benefit of securities held by creditor.*—A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a co-surety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

Martin v. DeOrnelas, 139 Cal. 49; 72 Pac. 440.

5693. (§ 3696.) *The property of principal to be taken first.*—Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.

RIGHTS OF CREDITORS.

5694. (§ 3700.) A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

O'Neill v. State, 34 Mont. 526; 87 Pac. 971. In an action to recover on an appeal bond, where it appeared that a stranger to the original action had deposited in bank a sum of money to indemnify the sureties on the bond, the prin-

ciple of subrogation, embodied in this section, may not be invoked by the creditor.

Hopkins v. Warner, 109 Cal. 136; 41 Pac. 868.

ARTICLE V.

LETTER OF CREDIT.

Section 5695. *Letter of credit, what.*

“ 5696. *How addressed.*

“ 5697. *Liability of writer.*

“ 5698. *Letters of credit, either general or special.*

“ 5699. *Nature of general letter of credit.*

“ 5700. *Extent of general letter of credit.*

“ 5701. *A letter of credit may be a continuing guaranty.*

“ 5702. *When notice to the writer necessary.*

“ 5703. *The credit given must agree with the terms of the letter.*

5695. (§ 3710.) *Letter of credit, what.*—A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

5696. (§ 3711.) *How addressed.*—A letter of credit may be addressed to several persons in succession.

5697. (§ 3712.) *Liability of the writer.*—The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

5698. (§ 3713.) *Letters of credit, either general or special.*—A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

5699. (§ 3714.) *Nature of general letter of credit.*—A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes as to him of the same effect as if addressed to him by name.

5700. (§ 3715.) *Extent of general letter of credit.*—Several persons may successively give credit upon a general letter.

5701. (§ 3716.) *A letter of credit may be a continuing guaranty.*—If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealings between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

5702. (§ 3717.) *When notice of the writer necessary.*—The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

5703. (§ 3718.) *The credit given must agree with the terms of the letter.*—If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the terms of credit, or limits the amount thereof, the writer is not bound, except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

- CHAPTER I. LIENS IN GENERAL.
- II. MORTGAGE.
- III. PLEDGE.
- IV. MISCELLANEOUS LIENS.
- V. LOGGER'S LIEN.
- VI. STOPPAGE IN TRANSIT.

CHAPTER I.

LIENS IN GENERAL.

- ARTICLE I. DEFINITION OF LIENS.
- II. CREATION OF LIENS.
- III. EFFECT OF LIENS.
- IV. PRIORITY OF LIENS.
- V. REDEMPTION FROM LIENS.
- VI. EXTINCTION OF LIENS.

ARTICLE I.

DEFINITION OF LIENS.

Section 5704. Lien, what.

“ 5705. *Liens, general or special.*

“ 5706. *General lien, what.*

“ 5707. *Special lien, what.*

“ 5708. *Prior liens.*

“ 5709. *Contracts subject to provisions of this chapter.*

5704. (§ 3730.) *Lien, what.*—A lien is a charge imposed in some mode other than by a transfer in trust upon specific property, by which it is made security for the performance of an act.

Bennett Bros. v. Fitchett, 24 Mont. 467; 62 Pac. 782. A conditional sale, not an absolute sale with retention of lien, is not in effect a mortgage and void as to innocent third parties, though never

acknowledged and recorded with an affidavit.

Weber v. McCleverty, 149 Cal. 320; 86 Pac. 706.

5705. (§ 3731.) *Liens, general or special.*—Liens are either general or special.

5706. (§ 3732.) *General lien, what.*—A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor, against the owner of the property.

5707. (§ 3733.) *Special lien, what.*—A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

Stone v. Harris, 146 Cal. 560; 80 Pac. 711.

5708. (§ 3734.) *Prior liens.*—Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

Churchill v. Woodworth, 148 Cal. 675; 84 Pac. 155.

5709. (§ 3735.) *Contracts subject to provisions of this chapter.*—Contracts of mortgage, or pledge, are subject to all the provisions of this chapter.

ARTICLE II.

Section 5710. Lien, how created.

“ 5711. *No lien for claim not due.*

“ 5712. *Lien on future interest.*

“ 5713. *Lien may be created by contract.*

5710. (§ 3740.) *Lien, how created.*—A lien is created:

1. By contract of the parties; or,
2. By operation of law.

Stone v. Harris, 146 Cal. 560; 80 Pac. 711.

5711. (§ 3741.) *No lien for claim not due.*—No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

5712. (§ 3742.) *Lien on future interest.*—An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest.

Kreling v. Kreling, 118 Cal. 419; 50 Pac. 549.

5713. (§ 3743.) *Lien may be created by contract.*—A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

Lemon v. Wolff, 121 Cal. 274; 53 Pac. 801.

ARTICLE III.

EFFECT OF LIENS.

Section 5714. *Lien, or contract for lien, transfers no title.*

“ 5715. *Certain contracts void.*

“ 5716. *Creation of lien does not imply personal obligation.*

“ 5717. *Extent of lien.*

“ 5718. *Creditor may enforce obligation.*

“ 5719. *Holder of lien not entitled to compensation.*

5714. (§ 3750.) *Lien, or contract for lien, transfers no title.*—Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

Mathew v. Mathew, 138 Cal. 336; 71 Pac. 344.

5715. (§ 3751.) *Certain contracts void.*—All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

Bradbury v. Davenport, 114 Cal. 599; 46 Pac. 1062.

5716. (§ 3752.) *Creation of lien does not imply personal obligation.*—The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513. The purchaser of real estate, which is mortgaged, does not thereby be-
come personally liable for the indebtedness.
Hellman v. Shoulters, 114 Cal. 139; 44 Pac. 915.

5717. (§ 3753.) *Extent of lien.*—The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation that that which the lien originally secured.

Stone v. Harris, 146 Cal. 560; 80 Pac. 711.

5718. (§ 3754.) *Creditor may enforce obligation.*—The existence of a lien, as security for the performance of an obligation, does not affect the right of the creditor to enforce the obligation without regard to the lien.

Brophy v. Downey, 26 Mont. 261; 67 Pac. 316.

5719. (§ 3755.) *Holder of lien not entitled to compensation.*—One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under § § 5196 (2558) and 5197 (2559).

ARTICLE IV.

PRIORITY OF LIENS.

Section 5720. Priority of liens.

“ 5721. *Priority of mortgage for price.*

“ 5722. *Order of resort to different funds.*

5720. (§ 3770.) *Priority of liens.*—Other things being equal, different liens upon the same property have priority according to the time of their creation.

5721. (§ 3771.) *Priority of mortgage for price.*—Except as otherwise provided by law, a mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

Sels v. Bunnell, 120 Cal. 683; 53 Pac. 266.

5722. (§ 3772.) *Order of resort to different funds.*—Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order on the demand of any party interested:

1. To the things upon which he has an exclusive lien.
2. To the things which are subject to the fewest subordinate liens.
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

First—To the things which have not been transferred since the prior lien was created.

Second—To the things which have been so transferred without a valuable consideration; and,

Third—To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

Vincent v. Vineyard, 24 Mont. 218; 61 Pac. 134.

Estate of Levin Brothers, 139 Cal. 352; 63 Pac. 335.

ARTICLE V.

REDEMPTION FROM LIEN.

Section 5723. Right to redeem.

" 5724. *Rights of inferior lienor.*

" 5725. *Redemption from lien, how made.*

5723. (§ 3780.) *Right to redeem.*—Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

Grogan v. Valley Co., 30 Mont. 236; 76 Pac. 213. No proceedings were instituted for foreclosure of a mortgage, and the mortgagor in bringing an action to redeem four years after the mortgagee went into possession, was not guilty of such leaches as to deprive him of the right to relief.

Allen v. Allen, 95 Cal. 195; 30 Pac. 213.

5724. (§ 3781.) *Rights of inferior lienor.*—One who has a lien, inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

5725. (§ 3782.) *Redemption from lien, how made.*—Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.

EXTINCTION OF LIENS.

Section 5726. Lien deemed accessory to the act whose performance it secures.

" 5727. *Extinction by sale or conversion.*

" 5728. *Lien extinguished by lapse of time under statute of limitations.*

" 5729. *Apportionment of lien.*

" 5730. *When restoration extinguishes lien.*

5726. (§ 3790.) *Lien deemed accessory to the act whose performance it secures.*—A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513. *Duncan v. Hawn* 104 Cal. 12; 37 Pac. 626.

5727. (§ 3791.) *Extinction by sale or conversion.*—The sale of any property on which there is a lien, in satisfaction of the

claim secured thereby, or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

Chase v. Putnam, 117 Cal. 368; 49 Pac. 204.

5728. (§ 3792.) *Lien extinguished by lapse of time under statute of limitations.*—A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

San Jose Bank v. Madera Bank, 144 Cal. 577; 78 Pac. 5.

5729. (§ 3793.) *Apportionment of lien.*—The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

5730. (§ 3794.) *When restoration extinguishes lien.*—The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGE.

ARTICLE I. MORTGAGES IN GENERAL.

II. MORTGAGES OF REAL PROPERTY.

III. MORTGAGES OF PERSONAL PROPERTY.

ARTICLE I.

MORTGAGES IN GENERAL.

Section 5731. Mortgage, what.

“ 5732. *Property adversely held may be mortgaged.*

“ 5733. *Lien of a mortgage, when special.*

“ 5734. *Transfer of interest, when deemed a mortgage.*

“ 5735. *Transfer made subject to defeasance may be proved.*

“ 5736. *Mortgage, on what a lien.*

“ 5737. *Mortgage does not entitle mortgagee to possession.*

“ 5738. *Mortgage not a personal obligation.*

“ 5739. *Waste.*

“ 5740. *Subsequently acquired title inures to mortgagee.*

“ 5741. *Foreclosure.*

“ 5742. *Power of sale.*

Section 5743. Power of attorney to execute.

“ 5744. *Recording assignment of mortgage.*

“ 5745. *Recording assignment of mortgage not notice to mortgagor.*

“ 5746. *Mortgage passes by assignment of debt.*

5731. (§ 3810.) *Mortgage, what.*—Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

Davidson v. Wampler, 29 Mont. 68; 74 Pac. 84. Under the statutes of the territory and state, a mortgage has never possessed any of the characteristics of a sale; it has been considered a mere lien, fixed on property by contract of the parties, to secure the payment of a particular obligation or performance of a particular act.

Swain v. McMillan, 30 Mont. 439; 76 Pac. 945. A mortgage does not create an interest in real property.

Mueller v. Renkes, 31 Mont. 102; 77

Pac. 513. A mortgage does not create or alienate an estate in real property, but is a mere security for the payment of a debt, or the discharge of an obligation. A mortgage is a conveyance of only a chattel interest.

Cornish v. Woolverton, 32 Mont. 475; 81 Pac. 10. The mortgage is an incident of the debt or obligation, a security, and an assignment of the mortgage alone is a nullity.

Renton v. Gibson, 148 Cal. 653; 84 Pac. 186.

5732. (§ 3811.) *Property adversely held may be mortgaged.*—A mortgage may be created upon property held adversely to the mortgagor.

5733. (§ 3812.) *Lien of a mortgage, when special.*—The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

Swain v. McMillan, 30 Mont. 439; 76 Pac. 945.

5734. (§ 3813.) *Transfer of interest, when deemed a mortgage.*—Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is deemed a pledge.

Renton v. Gibson, 148 Cal. 653; 84 Pac. 186.

5735. (§ 3814.) *Transfer made subject to defeasance may be proved.*—The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or incumbrancer for value and without notice) though the fact does not appear by the terms of the instrument.

Payne v. Morey, 144 Cal. 132; 77 Pac. 831.

5736. (§ 3815.) *Mortgage, on what a lien.*—A mortgage is a lien upon everything that would pass by a grant of the property.

Bennett Bros. v. Fitchett, 24 Mont. 467; 62 Pac. 782.

Commercial Bank v. Pritchard, 126 Cal. 605; 59 Pac. 130.

5737. (§ 3816.) *Mortgage does not entitle mortgagee to possession.*—A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

Harper v. Gordon, 128 Cal. 491; 61 Pac. 84.

5738. (§ 3817.) *Mortgage not a personal obligation.*—A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513.

Fast v. Steele, 127 Cal. 204; 59 Pac. 585.

5739. (§ 3818.) *Waste.*—No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

Lavenson v. Standard Co. 80 Cal. 246; 22 Pac. 184.

5740. (§ 3819.) *Subsequently acquired title inures to mortgagee.*—Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt, in like manner as if acquired before the execution.

5741. (§ 3820.) *Foreclosure.*—A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the Code of Civil Procedure.

5742. (§ 3821.) *Power of sale.*—A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Muth v. Goddard, 28 Mont. 252; 72 Pac. 626.

Godfrey v. Monroe, 101 Cal. 227; 35 Pac. 761.

5743. (§ 3822.) *Power of attorney to execute.*—A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

Adams v. Hopkins, 144 Cal. 35; 77 Pac. 712.

5744. (§ 3823.) *Recording assignment of mortgage.*—An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Cornish v. Woolverton, 32 Mont. 476; 81 Pac. 10. The record of the assignment of a mortgage is notice to a purchaser from the mortgagor, so that payments by him to the assignor are at his

own risk, in the absence of any showing that when the payments were made, the assignor was in possession of the note secured by the mortgage.

5745. (§ 3824.) *Recording assignment of mortgage not notice to mortgagor.*—When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond or other instrument.

Cornish v. Woolverton, 32 Mont. 476; 81 Pac. 10.

Rodgers v. Peckham, 120 Cal. 241; 52 Pac. 483.

5746. (§ 3825.) *Mortgage passes by assignment of debt.*—The assignment of a debt secured by mortgage carries with it the security.

Cornish v. Woolverton, 32 Mont. 471; 81 Pac. 8. The mortgage is an incident and passes to the assignee of the note. Adler v. Sargent, 109 Cal. 48; 41 Pac. 799.

ARTICLE II.

MORTGAGE OF REAL PROPERTY.

Section 5747. *What real property may be mortgaged.*

“ 5748. *Form of mortgage.*

“ 5749. *Mortgage renewed or extended by writing.*

“ 5750. *Defeasance, to affect grant absolute on its face.*

“ 5751. *May be recorded.*

“ 5752. *Satisfaction of mortgage.*

“ 5753. *Same.*

“ 5754. *Record of satisfaction.*

“ 5755. *Satisfaction of mortgages.*

“ 5756. *Mortgages by corporation.*

5747. (§ 3840.) *What real property may be mortgaged.*—Any interest in real property which is capable of being transferred may be mortgaged.

McLeod v. Barnum, 131 Cal. 606; 63 Pac. 924.

5748. (§ 3841.) *Form of mortgage.*—A mortgage of real property may be made in substantially the following form:

“This mortgage, made the——day of——, in the year——, by A. B., of——, mortgagor, to C. D., of——, mortgagee, witnesseth:

“That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of——dollars, on (or before) the——day of——, in the year——, with interest thereon (or as security for the payment of an obligation, describing it, etc.)

A. B.”

5749. (§ 3842.) *Mortgage renewed or extended by writing.*—A mortgage of real property can be created, renewed or extended, only by writing, with the formalities required in the case of a grant of real property.

Wilson v. Pickering, 28 Mont. 439; 72 Pac. 823. This section does not apply to a mortgage on real estate, renewed in 1890, by the extension of the note which it secured.

5750. (§ 3843.) *Defeasance, to affect grant absolute on its face, must be recorded.*—When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an in-

strument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the county recorder of the county where the property is situated.

Payne v. Morey, 144 Cal. 132; 77 Pac. 831.

5751. (§ 3844.) *May be recorded.*—Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants thereof.

Adler v. Sargent, 109 Cal. 49; 41 Pac. 799.

5752. (§ 3845.) *Satisfaction of mortgage.*—Any mortgage that has been or may be hereafter recorded may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the county clerk, or his deputy, who shall subscribe the same as a witness. Such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Swain v. McMillan, 30 Mont. 439; 76 Pac. 945. The phrase "deed of release" means a writing, duly subscribed and acknowledged by the mortgagee, whereby

he absolves the mortgaged property from the lien of the mortgage.

Mueller v. Renkes, 31 Mont. 103; 77 Pac. 513.

5753. (§ 3846.) *Same.*—Any mortgage shall also be discharged upon the record thereof, by the county clerk in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assignee, acknowledged, or proved and certified, as in this code prescribed, to entitle a conveyance to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

5754. (§ 3847.) *Record of satisfaction.*—Every such certificate, and the proof and acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book containing such record, in the minutes of the discharge of such mortgage made by the county clerk upon the margin of the record thereof.

5755. *Satisfaction of mortgage.*—Any mortgagee or his personal representative or assignee, as the case may be, after the full performance of the conditions of the mortgage, whether before or after a breach thereof, who shall, for the space of seven days after being, requested, refuse or neglect to execute and acknowledge a certificate of discharge or release thereof, shall be liable to the mortgagor, his heirs or assigns, in the sum of One Hundred (\$100.00) Dollars; and also, for all actual damages occasioned by such neglect or refusal. When such discharge or release is made by the personal representative of the mortgagee, it shall be accompanied by a certified copy of his authority, unless such authority is already of record in the office of the County Clerk and Recorder where such mortgage is recorded. In case such discharge or lease is made by an assignee, it must be accompanied

by the assignment of such mortgage, unless such assignment is already of record in the office of the County Clerk and Recorder where such mortgage is recorded. In the event that such discharge or release is executed by an attorney in fact, such discharge or release shall have attached to it the power of attorney under which it is made, unless such power of attorney is already of record in the office of the County Clerk and Recorder where such mortgage is recorded. When such discharge or release is executed by the heir or heirs of the mortgagee, such discharge or release must be accompanied by a certified copy of an order or decree of a court of competent jurisdiction showing such authority, unless such order or decree is already of record in the office of the County Clerk and Recorder where such mortgage is recorded. Foreign administrators and executors may satisfy mortgages of record in Montana, *provided*, that the satisfaction of mortgages be accompanied by an authenticated copy of their letters of administration, or letters testamentary, with the certificate of the Clerk of the Court in which the appointment was made that the same have not been revoked and are in full force, which certificate and certified copy of letters shall be presented and recorded in connection with the satisfaction of the mortgage. When so presented and recorded, they shall have the same force and effect as if the mortgage were satisfied by the mortgagee. [*Act approved February 25, 1905.*] (9th Sess. Chap. 34.)

5756. (§ 38½.) *Mortgages by corporation.*—All mortgages, deeds of trust, or assignments for the benefit of creditors of both real and personal property, executed by a corporation, are governed by the law relating to mortgages or deeds of trust of real property, and must be recorded in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, but any mortgage, deed of trust, or assignment for the benefit of creditors must be accompanied by the affidavit specified in § 5758 (3861) of this code, and which said affidavit may be made on behalf of any such company or corporation by the president, secretary or managing agent thereof.

ARTICLE III.

MORTGAGE OF PERSONAL PROPERTY.

Section 5757. What interests may be mortgaged.

“ 5758. *Requisite to validity of chattel mortgage.*

“ 5759. *Mortgage by partnership.*

“ 5760. *Acknowledgment.*

“ 5761. *Filing of mortgage and duty of recorder.*

“ 5762. *Duration of lien.*

- Section 5763. Renewal of mortgage. Affidavit.*
 " 5764. *Effect of filing affidavit.*
 " 5765. *Rights of subsequent mortgagee.*
 " 5766. *Mode of attachment of mortgaged chattels.*
 " 5767. *Certified copy in case of loss of original.*
 " 5768. *Extent of provisions of this chapter.*
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 " 5770. *Possession of range stock.*
 " 5771. *Satisfaction of mortgage.*
 " 5772. *Penalty for selling mortgaged chattels.*
 " 5773. *Mortgage on growing crops.*

5757. (§ 3860.) *What interests may be mortgaged.*—Any interest in personal property which is capable of being transferred may be mortgaged.

Noyes v. Ross, 23 Mont. 440; 59 Pac. 372. This was the law in Montana before the codes were adopted.

5758. (§ 3861.) *Requisite to validity of chattel mortgage.*—A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value, unless:

1. The possession of such property be delivered to and retained by the mortgagee; or,

2. The mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or in case any party is absent from the city or township where such mortgage is executed, at the time of the execution thereof, an affidavit of those present and of the agent or attorney in fact of such absent party, that the same is made in good faith, to secure the amount named therein, and without any design to hinder, delay or defraud creditors, and be acknowledged and filed as hereinafter provided.

Caplice Co. v. Beauchamp, 22 Mont. 261; 56 Pac. 279. A bona fide subpurchaser of chattels takes free from the lien of an unrecorded mortgage, though the first purchaser had notice.

Reynolds v. Fitzpatrick, 23 Mont. 55; 57 Pac. 453. A statement, signed by all the parties to a chattel mortgage, but the jurat of which does not bear the signature or seal of the officer before whom it was sworn to, is not a sufficient compliance with this section. In this affidavit, the words "hinder," "delay," and "defraud" are essential to the validity of the mortgage.

Westheimer v. Goodkind, 24 Mont. 99; 60 Pac. 814. This section does not affect mortgages executed before it was adopted. A mortgage made and filed in May, 1895,

was, for the want of a proper affidavit and acknowledgment, invalid. This section did not vitalize the mortgage, or make it valid as to third persons acquiring rights in the property after July 1, 1895.

Bennett Bros. v. Fitchett, 24 Mont. 467; 62 Pac. 782.

Reynolds v. Fitzpatrick, 28 Mont. 176; 72 Pac. 512.

Bank v. Beley, 32 Mont. 294; 80 Pac. 257. A chattel mortgage of property left in the possession of the mortgagor is void against attaching creditors, where it is not accompanied by the affidavit of the mortgagee required by this section.

Talcott v. Hurlbert, 143 Cal. 6; 76 Pac. 647.

5759. (§ 3862.) *Mortgage by partnership.*—Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required on behalf of

the firm, and the mortgage so executed and the affidavit so made is as valid as if executed and made by all the partners, or their agent, or attorney in fact. In case of a corporation, the president, secretary or managing agent thereof, may make the affidavit on its behalf.

5760. (§ 3863.) *Acknowledgment.*—Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same, in the manner provided for the acknowledgment of conveyances of real property, before some officer authorized by law to take acknowledgments of deeds. The form of such mortgage may be substantially the same as prescribed in § 5748 (3841) of this code.

5761. (§ 3864.) *Filing of mortgage and duty of recorder.*—Every mortgage of personal property, together with the affidavit of the parties thereto, or a copy thereof, certified to be correct by the county clerk, or person before whom the acknowledgment has been made, must be filed in the office of the county clerk of the county where the mortgagor resides, or, in case he is not a resident of this state, then in the office of the county clerk of the county where the property is at the time of the execution of the mortgage; and the county clerk must, on receipt of such mortgage or copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book properly ruled and kept for that purpose, the names of all the parties, the names of the mortgagors to be alphabetically arranged, the consideration thereof, the date of its maturity, and the time of filing the same.

Noyes v. Ross, 23 Mont. 440; 59 Pac. 372. A chattel mortgage which authorizes the mortgagor to retain possession, with the right to sell the stock of goods mortgaged in the ordinary and usual course of trade, if otherwise good, is valid, provided it appears therein that such sales are to be for the benefit

of the mortgagee, and the mortgagor is to account to the mortgagee for the proceeds of the sales. A chattel mortgage is not on its face invalid because it authorizes one of the mortgagors in possession to retain his living expenses out of the proceeds of such sales.

5762. *Duration of lien.*—Every mortgage of personal property, made, acknowledged and filed, as provided by the laws of this State, is thereupon, if made in good faith, good and valid as against the creditors of the mortgagor or subsequent purchaser, or incumbrancers, from the time it is so filed until the maturity of the entire debt or obligation secured thereby and for the period of sixty days thereafter. The entire period of the time such mortgages are valid and binding against the creditors of the mortgagor and subsequent purchasers and incumbrancers must not exceed one year and sixty days, except by a compliance with the provisions of the next section. [Act approved March 4, 1907, § 1.] (10th Sess. Chap. 81.)

5763. *Renewal of mortgage. Affidavit.*—Every mortgage of personal property made, acknowledged and filed as provided by the laws of this State, may be renewed at any time within sixty

days after the maturity of the debt or obligation secured thereby, in case such debt or obligation or any part thereof, be unpaid or unfulfilled, by the filing of an affidavit showing the date of such mortgage, the name of the mortgagor and mortgagee, the date of filing the same, the amount of the debt or obligation secured thereby, and the amount of the debt justly owing at the time of filing such affidavit, or the conditions of the obligations unfulfilled, and that such debt or obligation was neither made nor renewed to hinder, delay or defraud the creditors or subsequent incumbrancers of the mortgagor; which affidavit must be subscribed and sworn to by the mortgagee or his assignee. In case of the absence of the mortgagee or his assignee from the city or township where such affidavit was executed, the affidavit may be made by the agent or attorney in fact of the mortgagee or his assignee. The affidavit must be made before an officer authorized to administer oaths, filed in the office where the mortgage therein described is filed, and thereupon the county clerk of such county must attach such affidavit to the mortgage therein described and note the date of the filing thereof opposite the entry of the mortgage therein described, in the book provided by the law for the entry of chattel mortgages; and the original mortgage shall then continue to be in full force and virtue for the period of one year after the expiration of the term for which it was originally given; and a like affidavit may be filed within sixty days after the expiration of said period of one year last aforesaid, and the said original mortgage shall then continue to be in full force and virtue for the period of one year and in addition to the first years renewal, and under the same conditions and within the same limitations a like affidavit may be filed to renew the said mortgage for each succeeding year thereafter until the debt secured thereby shall be fully paid. *Provided* that in case the debt for which any mortgage is given as a security is payable in two or more installments any one or more of which are to become due and payable after one year from the date thereof, then in such event the affidavit of extension of such mortgage herein provided for must be made and filed within sixty days after the first installment of said debt falls due whether such installment be paid or not and must be made and filed within sixty days after each subsequent installment falls due whether the same be paid or not until the entire debt secured thereby shall be fully paid. *And provided further* that such installments shall become due and payable not more than one year apart, and the first of said installments shall fall due not more than one year from the date of such mortgage. [Act approved March 4, 1907. § 2.] (10th Sess. Chap. 81.)

5764. (§ 3867.) *Effect of filing affidavit.*—The filing of the affidavit provided in the next preceding section shall not be con-

strued to extend the time of maturity of any debt, or the execution of an obligation secured by such mortgage, but the same may be enforced according to the conditions thereof, and such mortgage foreclosed according to law, at any time within the period for which such mortgage is so renewed, unless agreement be made between the mortgagee and mortgagor extending the time of payment of such debt or fulfillment of such obligation to the time stated in such affidavit.

Rosenbaum v. Ryan, 33 Mont. 428; 84 Pac. 1121. The statute relating to the renewal and extension of a chattel mortgage by means of an affidavit executed and filed by the mortgagee must be strictly followed.

The time fixed in an affidavit of renewal of a chattel mortgage makes the utmost limit of the life of the mortgage lien as against attaching creditors of the mortgagor.

5765. (§ 3868.) *Rights of subsequent mortgagee.*—Any subsequent mortgagee of personal property, upon which a prior mortgage exists, which has been extended or renewed, as provided in § 5763 of this article, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, as shown by such affidavit and mortgage, or deposit the full amount thereof with the county clerk of the county wherein such affidavit and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit, shall be filed in said office and attached to such mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

5766. (§ 3869.) *Mode of attachment of mortgaged chattels.*—Personal property mortgaged may be taken on attachment or execution issued at the suit of a creditor of the mortgagor; but before the property is so taken, the officer must pay or tender to the mortgagee, the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer of the county in which the mortgage is filed, payable to the order of the mortgagee; and when the property then taken is sold, under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Cheney v. Caldwell, 20 Mont. 77; 49 Pac. 397. This section does not refer to mortgaged property which is exempt from execution.

5767. (§ 3870.) *Certified copy in case of loss of original.*—A copy of any mortgage of personal property, made, acknowledged and filed as provided in this article, certified by the county clerk in whose office the same shall be filed, may be read in evidence in any court of this state, without further proof of the execution of the original, if said original be lost, or out of the power of the person wishing to use it.

5768. (§ 3871.) *Extent of provisions of this chapter.*—The provisions of the foregoing sections of this article shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property, as shall have the effect of a mortgage or lien upon such property.

Bennett Bros. v. Fitchell, 24 Mont. 467; 62 Pac. 782.

5769. (§ 3872.) *Foreclosure.*—An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the sheriff of such county, at the time of default, at the request of the mortgagee, must and it is hereby made his duty to advertise and sell the whole or any part of the mortgaged property, wherever it may be, in the manner provided in such mortgage; and at such sale, made as aforesaid, the mortgagee, or his representative or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff may require an indemnity bond from the mortgagee or his assigns before taking possession of, or selling the mortgaged property.

5770. (§ 3873.) *Possession of range stock.*—The Code of Civil Procedure provides the method of taking possession of range stock under mortgage, between the first day of November and the next succeeding fifteenth day of May.

5771. (§ 3874.) *Satisfaction of mortgage.*—Whenever the debt or obligation secured by any mortgage of personal property, which has been filed in the office of the county clerk, as provided in this article, shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage, or copy thereof, filed as aforesaid, and the fact of such discharge or satisfaction noted by the county clerk in the book kept by him, as provided in § 5761 (3864) of this article, opposite the names of the parties to such mortgage.

5772. (§ 3875.) *Penalty for selling mortgaged chattels.*—Any person having conveyed any goods, chattels or personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said property or any part thereof, to a third person for a valuable consideration, without informing him of the existence and effect of such

mortgage, shall forfeit and pay to the purchaser, twice the value of such property so sold, which forfeiture may be recovered in an action of debt, in any court having jurisdiction thereof.

5773. (§ 3876.) *Mortgage on growing crops.*—The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor.

Brande v. Babcock H. Co., 35 Mont. 261; 88 Pac. 949. Where mortgaged grain has been removed from land of the mortgagor, it is *prima facie* free from encumbrance, and the fact that one who bought it after its removal had knowledge

that it was once mortgaged is not sufficient to prevent him from being a *bona fide* purchaser.

Summerville v. Stockton M. Co., 142 Cal. 544; 76 Pac. 243.

CHAPTER III.

PLEDGE.

Section 5774. *Pledge, what.*

“ 5775. *When contract is to be deemed a pledge.*

“ 5776. *Delivery essential to validity of pledge.*

“ 5777. *Increase of thing.*

“ 5778. *Lienor may pledge property to extent of his lien.*

“ 5779. *Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.*

“ 5780. *Pledge lender, what.*

“ 5781. *Pledge holder, what.*

“ 5782. *When pledge lender may withdraw property pledged.*

“ 5783. *Obligations of pledge holder.*

“ 5784. *Pledge holder must enforce rights of pledgee.*

“ 5785. *Obligations of pledgee and pledge holder, for reward.*

“ 5786. *Gratuitous pledge holder.*

“ 5787. *Debtor's misrepresentation of value of pledge.*

“ 5788. *When pledgee may sell.*

“ 5789. *When pledgee must demand performance.*

“ 5790. *Notice of sale to pledgor.*

“ 5791. *Waiver of notice of sale.*

“ 5792. *Waiver of demand.*

“ 5793. *Sale must be by auction.*

“ 5794. *Pledgee's sale of securities.*

“ 5795. *Sale on demand of the pledgor.*

“ 5796. *Surplus to be paid to pledgor.*

“ 5797. *Same.*

“ 5798. *Pledgee's purchase of property pledged.*

“ 5799. *Pledgee may foreclose right of redemption.*

5774. (§ 3890.) *Pledge, what.*—Pledge is a deposit of personal property by way of security for the performance of another's act.

Durfee v. Harper, 22 Mont. 367; 56 Pac. 586.

Rohrbacher v. Court, 144 Cal. 633; 78 Pac. 22.

5775. (§ 3891.) *When contract is to be deemed a pledge.*—Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

Rohrbacher v. Court, 144 Cal. 633; 78 Pac. 22.

5776. (§ 3892.) *Delivery essential to validity of pledge.*—The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereafter prescribed.

Lilienthal v. Ballou, 125 Cal. 187; 57 Pac. 897.

5777. (§ 3893.) *Increase of thing.*—The increase of property pledged is pledged with the property.

5778. (§ 3894.) *Lienor may pledge property to extent of his lien.*—One who has a lien upon property may pledge it to the extent of his lien.

5779. (§ 3895.) *Real owner cannot defeat pledge of property transferred to apparent owner for the purpose of pledge.*—One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title to defeat a pledge of the property, made by the other to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

Brittan v. Oakland Bank, 124 Cal. 289; 57 Pac. 81.

5780. (§ 3896.) *Pledge lender, what.*—Property may be pledged as security for the obligation of another person than the owner, and in so doing, the owner has all the rights of a pledgor for himself, except as hereinafter stated.

5781. (§ 3897.) *Pledge holder, what.*—A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

5782. (§ 3898.) *When pledge lender may withdraw property pledged.*—One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

5783. (§ 3899.) *Obligations of pledge holder.*—A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new

pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

5784. (§ 3900.) *Pledge holder must enforce rights of pledge.*—A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Faulkner v. Bank, 130 Cal. 262; 62 Pac. 463.

5785. (§ 3901.) *Obligations of pledgee and pledge holder, for reward.*—A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

5786. (§ 3902.) *Gratuitous pledge holder.*—A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

Stewart v. Naud, 125 Cal. 599; 58 Pac. 186.

5787. (§ 3903.) *Debtor's misrepresentation of value of pledge.*—Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof, may recover his debt immediately, though it be not actually due.

5788. (§ 3904.) *When pledgee may sell.*—When performance of the act for which a pledge is given, is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions herein-after prescribed.

5789. (§ 3905.) *When pledgee must demand performance.*—Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

Bendel v. Crystal Co., 82 Cal. 200; 22 Pac. 1112.

5790. (§ 3906.) *Notice of sale to pledgor.*—A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Stewart v. Naud, 125 Cal. 600; 58 Pac. 186.

5791. (§ 3907.) *Waiver of notice of sale.*—Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

5792. (§ 3908.) *Waiver of demand.*—A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but cannot waive it in any other manner except by contract.

5793. (§ 3909.) *Sale must be by auction.*—The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

Bendel v. Crystal Co., 82 Cal. 200; 22 Pac. 1112.

5794. (§ 3910.) *Pledgee's sale of securities.*—A pledgee cannot sell any evidence of debt pledged to him except the obligations of governments, states, or corporations; but he may collect the same when due.

Farmers' Bank v. Copsey, 134 Cal. 289; 66 Pac. 324.

5795. (§ 3911.) *Sale on demand of the pledgor.*—Whenever property pledged can be sold for a price sufficient to satisfy the claims of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

5796. (§ 3912.) *Surplus to be paid to pledgor.*—After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor on demand.

5797. (§ 3913.) *Same.*—When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

5798. (§ 3914.) *Pledgee's purchase of property pledged.*—A pledgee, or pledge holder, cannot purchase the property pledged, except by direct dealing with the pledgor.

5799. (§ 3915.) *Pledgee may foreclose right of redemption.*—Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

Farmers' Bank v. Copsey, 134 Cal. 289; 66 Pac. 324.

CHAPTER IV.

MISCELLANEOUS LIENS.

- Section 5800. Lien of seller of real property.*
 “ 5801. *When transfer of contract waives lien.*
 “ 5802. *Extent of seller's lien.*
 “ 5803. *Lien of seller of personal property.*
 “ 5804. *Purchaser's lien on real property.*
 “ 5805. *Lien for service.*
 “ 5806. *Lien of factor.*
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 " 5815. *Lien for service of stallion.*
 " 5816. *Lien for driving logs.*
 " 5817. *Foreclosure.*
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5800. (§ 3930.) *Lien of seller of real property.*—One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured, otherwise than by the personal obligation of the buyer.

Selna v. Selna, 125 Cal. 360; 58 Pac. 16.

5801. (§ 3931.) *When transfer of contract waives lien.*—Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract; but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

Selna v. Selna, 125 Cal. 360; 58 Pac. 16.

5802. (§ 3932.) *Extent of seller's lien.*—The liens defined in §§ 5800 (3902) and 5804 (3934) are valid against every one claiming under the debtor, except a purchaser and incumbrancer in good faith and for value.

Selna v. Selna, 125 Cal. 360; 58 Pac. 16.

5803. (§ 3933.) *Lien of seller of personal property.*—One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in his possession when the price becomes payable, and may enforce his lien in like manner as if the property was pledged to him for the price.

Matteson v. Equitable Co., 143 Cal. 438; 77 Pac. 144.

5804. (§ 3934.) *Purchaser's lien on real property.*—One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Haile v. Smith, 113 Cal. 664; 45 Pac. 872.

5805. (§ 3935.) *Lien for service.*—Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the making, repairing, protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him

from the owner for such service. A ranchman, farmer, agister, herder, hotel keeper, livery, boarding or feed stable keeper, to whom any horses, mules, cattle, sheep, hogs or other stock are intrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing or ranching the same, and is authorized to retain possession thereof until the sum due is paid, and may enforce his lien as in the case of a pledge.

Seale v. McCarthy, 148 Cal. 62; 82 Pac. 845.

5806. (§ 3936.) *Lien of factor*.—A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

5807. (§ 3937.) *Banker's lien*.—A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

5808. (§ 3938.) *Shipmaster's lien*.—The master of a ship has a general lien, independent of possession upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

5809. (§ 3939.) *Seamen's lien*.—The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage, for their wages, which is superior to every other lien.

5810. (§ 3940.) *Officer's lien*.—An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

5811. (§ 3941.) *Judgment lien*.—The lien of a judgment is regulated by the Code of Civil Procedure.

5812. (§ 3942.) *Mechanic's lien*.—The liens of mechanics and others for materials and services are regulated further by the Code of Civil Procedure.

5813. (§ 3943.) *Stallion keeper must file statement*.—That every owner or agent who may have the custody or control of any stallion, who shall charge a fee for the service of such stallion, shall, before advertising or offering such services to the public for any fee, reward or compensation, file with the clerk of the county in which owner or owners or agents reside, or where such stallion shall be kept for service, a written statement, giving the name, age, pedigree and record if known, if not, that the same is unknown, description, term, and conditions upon which such stallion will serve. Upon filing such statement the county clerk

shall issue a certificate or license to owner or owners or agents, having custody and control of such stallion, that such statement has been filed in his office; the owner or owners or agents of such stallion shall then post a written or printed notice of a copy of the statement so filed with the county clerk in a conspicuous place in each locality in which said stallion shall be kept for service. [*Act approved Feb. 25, 1893.*]

5814. (§ 3944.) *Fraudulent pedigree; penalty.*—Every owner or agent who shall proclaim or publish a false or fraudulent pedigree or record or statement of any kind regarding any stallion, or who shall neglect or refuse to comply with the provisions of § 5813 of this act, shall forfeit all fees for the services of such stallion and the person or persons who have been deceived or defrauded by such false or fraudulent pedigree or record or statement, may sue and recover in any court having jurisdiction, such damages as may be shown to have been sustained by reason of false representation and fraud. [*Act approved Feb. 25, 1893.*]

5815. (§ 3945.) *Lien for service of stallion.*—Whenever the owner or agent of any stallion shall have complied with the foregoing provisions of this act, the services of such stallion shall become a lien on each mare served, together with a foal of such mare served from such service in an amount agreed upon between the parties at the time of service; or if no agreement was entered into by them, in such amount as specified as service fee of stallion or stallions in the statement of the owner or agent filed with the county clerk; *Provided*, A notice of lien shall be filed within twelve months after such service; such lien shall terminate at the end of the year from the date of filing notice thereof, unless within that time an action shall be commenced for the enforcement thereof. [*Act approved Feb. 25, 1893.*]

5816. (§ 3946.) *Lien for driving logs.*—That any person who shall desire to float to market or place of manufacture any logs or timber in any of the streams of this state, and who shall be hindered and obstructed in so doing by the logs or timber of another, or any person whose logs or timber in any of the waters of this state are so intermixed with the logs or timber of another that the same cannot be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all logs or timber with which his own is or may be obstructed or intermixed towards such market or place of manufacture, to some point when the same can be conveniently separated from his own, and shall be entitled to a reasonable compensation therefor from the owner of such logs or timber; and upon the filing in the office of the county clerk and recorder of the county where such logs may be, within thirty days after the completion of such driving of any such logs or timber, a statement setting forth when and where the same were driven,

the amount of his claim therefor, and verified by his oath or affidavit, such person shall have and retain a lien upon such logs or timber for the amount of such claim from the time of filing the same, and may have and maintain a civil action for the amount of such claim, or for the enforcement of such lien, against the owner of such logs or timber; *Provided*, That a failure to commence such action within sixty days after the filing of such claim shall operate as a discharge of said lien. [Act approved March 7, 1895.]

5817. (§ 3947.) *Foreclosure*.—A lien upon any logs or timber as provided in the preceding section, may be foreclosed in the district court of the county in which the same is filed, and the decree for the enforcement thereof shall provide for the sale of said logs or timber, or so much thereof as may be necessary to satisfy said lien and costs, and the said sale shall be conducted by the sheriff in the manner provided by law for the sale of personal property under execution. [Act approved March 7, 1895.]

5818. (§ 3948.) *Release from lien*.—Any person, upon whose logs or timber any lien is filed or claimed, under the provisions of the foregoing sections, may release such logs or timber from such lien and regain and take possession thereof, by furnishing an undertaking in double the amount of the claim, executed by two sufficient sureties to be approved by the clerk and recorder in whose office the lien is filed, and conditioned that such person do pay all damages and costs that may be awarded against him in any action to foreclose such lien or enforce such claim. Such undertaking shall be filed in the office of the clerk and recorder in whose office the lien is filed, and such clerk and recorder shall thereupon give to the person filing the same a certificate stating that such undertaking has been filed and approved. [Act approved March 7, 1895.]

CHAPTER V.

LOGGER'S LIENS.

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|---------|-------|--------------------------------------|
| Section | 5819. | Who entitled to lien. |
| " | 5820. | Same. Lien on lumber. |
| " | 5821. | Lien of land owner. |
| " | 5822. | Priority of liens. |
| " | 5823. | Extent of lien. |
| " | 5824. | Same. |
| " | 5825. | Recording claim of lien. |
| " | 5826. | Same. |
| " | 5827. | Duties of county recorder. |
| " | 5828. | Duration of lien. |
| " | 5829. | Jurisdiction of court and procedure. |
| " | 5830. | Same. |

Section 5831. Immaterial defects in claim.

“ 5832. *Bona fide purchasers.*

“ 5833. *Parties.*

“ 5834. *Judgment and sale.*

“ 5835. *Sale of property.*

“ 5836. *Penalty for destroying means of identification of property.*

5819. *Who entitled to lien.*—Every person performing labor upon, or who shall assist in obtaining or securing saw logs, piling, railroad ties, cord wood or other timber, has a lien upon the same, and upon all other saw logs, piling, railroad ties, cordwood or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed for the work or labor done upon or in obtaining or securing the particular saw logs, piling, railroad ties, cordwood or other timber in said claim or lien described, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp shall be regarded as a person who assists in obtaining or securing the timber herein mentioned. [Act approved February 20th, 1899, § 1.] (6th Sess. Chap. 126-127.)

5820. *Same. Lien on lumber.*—Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or sub-contractor of such owner. The term lumber, as used in this Act, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [Act approved February 20th, 1899, § 2.] (6th Sess. 127.)

5821. *Lien of land owner.*—Any person who shall permit another to go upon his timber land and cut thereon saw logs, piling, railroad ties, cordwood or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [Act approved February 20th, 1899, § 3.] (6th Sess. 127.)

5822. *Priority of liens.*—The liens provided for in this chapter are preferred liens and prior to any other liens, and no sale or transfer of any saw logs, piling, railroad ties, cordwood or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this act those for work and labor shall be preferred; *Provided,*

That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claims of liens for work and labor recognized and provided for in this Act. [Act approved February 20th, 1899, § 4.] (6th Sess. 127.)

5823. *Extent of lien.*—The person rendering the service or doing the work or labor named in § § 5819 (1) and 5820 (2) of this Act is only entitled to the liens as provided herein for services, work or labor for the period of three calendar months, or any part thereof next preceding the filing of the claim, as provided in § 5826 (8) of this Act. [Act approved February 20th, 1899, § 5.] (6th Sess. 127-128.)

5824. *Same.*—The person granting the privilege mentioned in § 5821 (3) of this Act is only entitled to the lien as provided therein for saw logs, piling, railroad ties, cord wood or other timber cut during the three months next preceding the filing of the claim, as herein provided in the next succeeding Section of this Act. [Act approved February 20th, 1899, § 6.] (6th Sess. 128.)

5825. *Recording claim of lien.*—Every person, within thirty days after the close of the rendition of the services or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county in which such saw logs, piling, railroad ties, cord wood or other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with a lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

..... Claimant, vs.....
 Notice is hereby given that..... of.....
 county, State of Montana, claims a lien upon a.....of.....
 being about.....in quantity, which were cut or manu-
 factured in.....County, State of Montana, are
 marked thus,.....are now lying
 in a.....for labor performed upon and assistance
 rendered in..... said.....

that the name of the owner or reputed owner is.....; that.....employed said..... to perform such labor and render such assistance upon the following terms and conditions, to-wit: The said..... agreed to pay the said.....for such labor and assistance.....; that said contract has been faithfully performed and fully complied with on the part of said.....who performed labor upon and assisted in..... said.....for a period of.....; that said labor and assistance were so performed and rendered upon said.....between the.....day of.....and the..... day of.....and the rendition of said service was closed on the.....day of....., and thirty days have not elapsed since that time; that the amount of claimant's demand for said services is.....; that no part thereof has been paid except..... and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of.....in which amount he claims a lien upon said.....; That said..... also claims a lien on all said.....now owned by said.....of said county to secure payment for the work and labor performed in obtaining or securing the said logs, piling, railroad ties, cord wood or other timber, lumber or shingles herein described.

.....Claimant.
State of Montana, County of.....ss.
.....
being first duly sworn, on oath says that he is.....named in the foregoing claim, has heard the same read, and knows the contents thereof, and believes the same to be true.

.....
Subscribed and sworn to before me this..... day of.....

.....
[Act approved February 20th, 1899, § 7.] (6th Sess. Chap. 128-129.)

5826. *Same.*—Every person mentioned in Section 5821 (3) of this Act claiming the benefit must file for record with the county clerk of the county in which such saw logs, piling, railroad ties, cord wood or other timber were cut, a claim in substance the same as provided in the next preceding section of this Act, and verified as therein provided. [Act approved February 20th, 1899, § 8.] (6th Sess. 129.)

5827. *Duties of county recorder.*—The county clerk must file any claim presented under the provisions of this Act, endorse thereon the time of receiving the same, and keep the same in his

office for the inspection of all persons and shall enter in a book, properly ruled and kept for such purpose, the names of all the parties, such names to be alphabetically arranged, the amount of the lien and the time of filing the same. [*Act approved February 20th, 1899, § 9.*] (6th Sess. 129-130.)

5828. *Duration of lien.*—No lien provided for in this act binds any saw logs, piling, railroad ties, cord wood or other timber, or lumber and shingles for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same; *Provided, however,* That in case such civil action so commenced should for any cause other than the merits, be non-suited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [*Act approved February 20th, 1899, § 10.*] (6th Sess. 130.)

5829. *Jurisdiction of court and procedure.*—The liens provided for in this act shall be enforced by a civil action in the district court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it. [*Act approved February 20th, 1899, § 11.*] (6th Sess. 130.)

5830. *Same.*—Any person who shall bring a civil action to enforce the lien provided for, any person having a lien as provided for, or who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, piling, railroad ties, cord wood or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the three months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said saw logs, piling, railroad ties, cord wood or other timber, or in manufacturing said lumber into shingles during the whole or any part of the three months mentioned in Section 5825 (7) of this Act, or for timber cut during the whole or any part of the three months above mentioned. And where proceedings are commenced against any lot of saw logs, piling, railroad ties, cord wood or other timber or lumber or shingles, as herein provided, and some of the lienors claim liens against these specific saw logs, piling, railroad ties, cord wood, or other timber or lumber or shingles proceeded against, and others against the same generally, to

secure their claim for work and labor, the priority of the liens shall be determined as hereinbefore provided. [*Act approved February 20th, 1899, § 12.*] (6th Sess. 130-131.)

5831. *Immaterial defects in claim.*—No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand credits and offsets or of the balance due was made with the intent to defraud or the court shall find that an innocent third party without notice, actual or constructive, has, since the claim was filed, become a bona fide owner of the property lienied upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner. [*Act approved February 20th, 1899, § 13.*] (6th Sess. 131.)

5832. *Bona fide purchasers.*—It shall be conclusively presumed by the court, that a party purchasing the property lienied upon within the thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property lienied upon, unless it shall appear that he has paid full value for the said property and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims, as are entitled to liens upon the same property under the provisions of this Act, according to the priorities herein established. [*Act approved February 20th, 1899, § 14.*] (6th Sess. 131.)

5833. *Parties.*—Any number of persons claiming liens under this Act may join in the affidavit in § 5830 (12) of this Act, provided, and may join in the same action and when separate actions are commenced the court may consolidate them. The court shall also allow as parts of the costs the money paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [*Act approved February 20th, 1899, § 15.*] (6th Sess. 131.)

5834. *Judgment and sale.*—In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this act pro rata in its class, according to the amount of such judgment. [*Act approved February 20, 1899, § 16.*] (6th Sess. 131.)

5835. *Sale of property.*—The court or judge may order any property subject to a lien as in this Act provided, to be sold by the

sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in section next preceding and the proceeds of such sale must be paid into court to be applied as in said section directed. [*Act approved February 20th, 1899, § 17.*] (6th Sess. 131-132.)

5836. *Penalty for destroying means of identification of property.*—Any person who shall eloin, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, piling, railroad ties, cord wood, shingles, or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to a lien holder for the damages to the amount secured by his lien, and it being shown to the court in a civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action or the damages may be recovered by a civil action against such person. [*Act approved February 20th, 1899, § 18.*] (6th Sess. 132.)

CHAPTER VI.

STOPPAGE IN TRANSIT.

Section 5837. When consignor may stop goods.

“ 5838. *What is insolvency of consignee.*

“ 5839. *Transit, when ended.*

“ 5840. *Stoppage, how effected.*

“ 5841. *Effect of stoppage.*

5837. (§ 3970.) *When consignor may stop goods.*—A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

5838. (§ 3971.) *What is insolvency of consignee.*—A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

Stadler v. Bank, 22 Mont. 219; 56 Pac. 120.

5839. (§ 3972.) *Transit, when ended.*—The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

5840. (§ 3973.) *Stoppage, how effected.*—Stoppage in transit can be affected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

5841. (§ 3974.) *Effect of stoppage.*—Stoppage in transit does not, of itself, rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

THE NEGOTIABLE INSTRUMENTS LAW.

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| | II. | FORM AND INTERPRETATION. |
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ARTICLE I.

GENERAL PROVISIONS.

Section 5842. Short title.

" 5843. *Definitions and meaning of terms.*

" 5844. *Person primarily liable on instrument.*

" 5845. *Reasonable time; what constitutes.*

" 5846. *Time, how computed; when last day falls on holiday.*

" 5847. *Application of chapter.*

" 5848. *Law merchant; when governs.*

5842. *Short title.*—This act shall be known as the Negotiable Instruments Law. [Act approved March 7, 1903, § 190.] (8th Sess. Chap. 121.)

Stadler v. Bank, 22 Mont. 219; 56 Pac. 120. The sections relating to negotiable instruments have been enacted in a majority of the states. They were prepared by the commissioners on uniform state laws. Hon. Amasa M. Eaton, the

president, in his address to the commissioners in September, 1904, at St. Louis, collates the decisions relating to these sections. (Pages 65 to 76 inclusive.) The supreme court of Montana has not construed any part of this legislation.

5843. *Definitions and meaning of terms.*—In this act, unless the context otherwise requires:—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to the person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print. [Act approved March 7, 1903, § 191.] (8th Sess. Chap. 121.)

5844. *Person primarily liable on instrument.*—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondary" liable. [Act approved March 7, 1903, § 192.] (8th Sess. Chap. 121.)

5845. *Reasonable time, what constitutes.*—In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments and the facts of the particular case. [Act approved March 7, 1903, § 193.] (8th Sess. Chap. 121.)

5846. *Time, how computed; when last day falls on holiday.*—When the day, or the last day for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [Act approved March 7, 1903, § 194.] (8th Sess. Chap. 121.)

5847. *Application of chapter.*—The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof. [Act approved March 7, 1903, § 195.] (8th Sess. Chap. 121.)

5848. *Law merchant; when governs.*—In any case not provided for in this act the rules of the law merchant shall govern. [Act approved March 7, 1903, § 196.] (8th Sess. Chap. 121.)

ARTICLE II.

FORM AND INTERPRETATION.

- Section 5849. Form of negotiable instrument.*
- “ 5850. *Certainty as to sum; what constitutes.*
- “ 5851. *When promise is unconditional.*
- “ 5852. *Determinable future time; what constitutes.*
- “ 5853. *Additional provisions not affecting negotiability.*
- “ 5854. *Omissions; seal; particular money.*
- “ 5855. *When payable on demand.*
- “ 5856. *When payable to order.*
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- “ 5858. *Terms, when sufficient.*
- “ 5859. *Date, presumption as to.*
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- “ 5863. *Incomplete instrument not delivered.*
- “ 5864. *Delivery; when effectual; when presumed.*
- “ 5865. *Construction where instrument is ambiguous.*
- “ 5866. *Liability of person signing in trade or assumed name.*
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- “ 5868. *Liability of person signing as agent, et cetera.*
- “ 5869. *Signature by procuration; effect of.*
- “ 5870. *Effect of indorsement by infant or corporation.*
- “ 5871. *Forged signature; effect of.*

5849. *Form of negotiable instrument.*—An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;
2. Must contain an unconditional promise or order to pay a sum certain in money;
3. Must be payable on demand, or at a fixed or determined future time;
4. Must be payable to order or to bearer; and
5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [*Act approved March 7, 1903, § 1.*] (8th Sess. Chap. 121.)

5850. *Certainty as to sum; what constitutes.*—The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest; or
2. By stated instalments; or

3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. [*Act approved March 7, 1903, § 2.*] (*8th Sess. Chap. 121.*)

5851. *When promise is unconditional.*—An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional. [*Act approved March 7, 1903, § 3.*] (*8th Sess. Chap. 121.*)

5852. *Determinable future time; what constitutes.*—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [*Act approved March 7, 1903, § 4.*] (*8th Sess. Chap. 121.*)

5853. *Additional provisions not affecting negotiability.*—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [*Act approved March 7, 1903, § 5.*] (*8th Sess. Chap. 121.*)

5854. *Omissions; seal; particular money.*—The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. [*Act approved March 7, 1903, § 6.*] (*8th Sess. Chap. 121.*)

5855. *When payable on demand.*—An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed and overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. [*Act approved March 7, 1903, § 7.*] (*8th Sess. Chap. 121.*)

5856. *When payable to order.*—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. [*Act approved March 7, 1903, § 8.*] (*8th Sess. Chap. 121.*)

5857. *When payable to bearer.*—The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank. [*Act approved March 7, 1903, § 9.*] (8th Sess. Chap. 121.)

5858. *Terms, when sufficient.*—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. [*Act approved March 7, 1903, § 10.*] (8th Sess. Chap. 121.)

5859. *Date, presumption as to.*—Where an instrument or an acceptance of any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be. [*Act approved March 7, 1903, § 11.*] (8th Sess. Chap. 121.)

5860. *Ante-dated and post-dated.*—The instrument is not invalid for the reason only that it is antedated or postdated, *provided* this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [*Act approved March 7, 1903, § 12.*] (8th Sess. Chap. 121.)

5861. *When date may be inserted.*—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [*Act approved March 7, 1903, § 13.*] (8th Sess. Chap. 121.)

5862. *Blanks; when may be filled.*—Where an instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. [*Act approved March 7, 1903, § 14.*] (8th Sess. Chap. 121.)

5863. *Incomplete instrument not delivered.*—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands

of any holder, as against any person whose signature was placed thereon before delivery. [*Act approved March 7, 1903, § 15.*] (*8th Sess. Chap. 121.*)

5864. *Delivery; when effectual; when presumed.*—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [*Act approved March 7, 1903, § 16.*] (*8th Sess. Chap. 121.*)

5865. *Construction where instrument is ambiguous.*—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument contains the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [*Act approved March 7, 1903, § 17.*] (*8th Sess. Chap. 121.*)

5866. *Liability of person signing in trade or assumed name.*—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. [Act approved March 7, 1903, § 18.] (8th Sess. Chap. 121.)

5867. *Signature by agent; authority; how shown.*—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [Act approved March 7, 1903, § 19.] (8th Sess. Chap. 121.)

5868. *Liability of person signing as agent, et cetera.*—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [Act approved March 7, 1903, § 20.] (8th Sess. Chap. 121.)

5869. *Signature by procuration; effect of.*—A signature by “procuration” operates as a notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [Act approved March 7, 1903, § 21.] (8th Sess. Chap. 121.)

5870. *Effect of indorsement by infant or corporation.*—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [Act approved March 7, 1903, § 22.] (8th Sess. Chap. 121.)

5871. *Forged signature; effect of.*—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [Act approved March 7, 1903, § 23.] (8th Sess. Chap. 121.)

ARTICLE III.

CONSIDERATION.

- Section 5872. Presumption of consideration.*
“ 5873. *What constitutes consideration.*
“ 5874. *What constitutes holder for value.*
“ 5875. *When lien on instrument constitutes holder for value.*
“ 5876. *Effect of want of consideration.*
“ 5877. *Liability of accommodation endorser.*

5872. *Presumption of consideration.*—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. [Act approved March 7, 1903, § 24.] (8th Sess. Chap. 121.)

5873. *What constitutes consideration.*—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. [Act approved March 7, 1903, § 25.] (8th Sess. Chap. 121.)

5874. *What constitutes holder for value.*—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [Act approved March 7, 1903, § 26.] (8th Sess. Chap. 121.)

5875. *When lien on instrument constitutes holder for value.*—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [Act approved March 7, 1903, § 27.] (8th Sess. Chap. 121.)

5876. *Effect of want of consideration.*—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. [Act approved March 7, 1903, § 28.] (8th Sess. Chap. 121.)

5877. *Liability of accommodation indorser.*—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [Act approved March 7, 1903, § 29.] (8th Sess. Chap. 121.)

ARTICLE IV.

NEGOTIATION.

- Section 5878. What constitutes negotiation.*
- “ 5879. *Indorsement; how made.*
- “ 5880. *Indorsement must be of entire instrument.*
- “ 5881. *Kinds of indorsement.*
- “ 5882. *Special indorsement; indorsement in blank.*
- “ 5883. *Blank indorsement; how changed into special indorsement.*
- “ 5884. *When indorsement restrictive.*
- “ 5885. *Effect of restrictive indorsement; rights of indorsee.*
- “ 5886. *Qualified indorsement.*
- “ 5887. *Conditional indorsement.*
- “ 5888. *Indorsement of instrument payable to bearer.*
- “ 5889. *Indorsement where payable to two or more persons.*
- “ 5890. *Effect of instrument drawn or indorsed to a person as cashier.*
- “ 5891. *Indorsement where name is misspelled, et cetera.*
- “ 5892. *Indorsement in representative capacity.*
- “ 5893. *Time of indorsement; presumption.*
- “ 5894. *Place of indorsement; presumption.*
- “ 5895. *Continuation of negotiable character.*
- “ 5896. *Striking out indorsement.*
- “ 5897. *Transfer without indorsement; effect of.*
- “ 5898. *When prior party may negotiate instrument.*

5878. *What constitutes negotiation.*—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. [Act approved March 7, 1903, § 30.] (8th Sess. Chap. 121.)

5879. *Indorsement; how made.*—The indorsement must be written on the instrument itself or upon paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. [Act approved March 7, 1903, § 31.] (8th Sess. Chap. 121.)

5880. *Indorsement must be of entire instrument.*—The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [Act approved March 7, 1903, § 32.] (8th Sess. Chap. 121.)

5881. *Kinds of indorsement.*—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. [Act approved March 7, 1903, § 33.] (8th Sess. Chap. 121.)

5882. *Special indorsement; indorsement in blank.*—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so endorsed is payable to bearer, and may be negotiated by delivery. [Act approved March 7, 1903, § 34.] (8th Sess. Chap. 121.)

5883. *Blank indorsement; how changed to special indorsement.*—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [Act approved March 7, 1903, § 35.] (8th Sess. Chap. 121.)

5884. *When indorsement restrictive.*—An indorsement is restrictive, which either,

1. Prohibits the future negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [Act approved March 7, 1903, § 36.] (8th Sess. Chap. 121.)

5885. *Effect of restrictive endorsement; rights of endorsee.*—A restrictive endorsement confers upon the indorsee the right,

1. To receive payment of the instrument.
2. To bring any action thereon that the indorser could bring.
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. [Act approved March 7, 1903, § 37.] (8th Sess. Chap. 121.)

5886. *Qualified indorsement.*—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. [Act approved March 7, 1903, § 38.] (8th Sess. Chap. 121.)

5887. *Conditional indorsement.*—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the

same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. [*Act approved March 7, 1903, § 39.*] (8th Sess. Chap. 121.)

5888. *Indorsement of instrument payable to bearer.*—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. [*Act approved March 7, 1903, § 40.*] (8th Sess. Chap. 121.)

5889. *Indorser where payable to two or more persons.*—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. [*Act approved March 7, 1903, § 41.*] (8th Sess. Chap. 121.)

5890. *Effect of instrument drawn or indorsed to a person as cashier.*—Where an instrument is drawn or endorsed to a person as “Cashier” or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. [*Act approved March 7, 1903, § 42.*] (8th Sess. Chap. 121.)

5891. *Indorsement where name is misspelled, et cetera.*—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature. [*Act approved March 7, 1903, § 43.*] (8th Sess. Chap. 121.)

5892. *Indorsement in representative capacity.*—Where a person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [*Act approved March 7, 1903, § 44.*] (8th Sess. Chap. 121.)

5893. *Time of indorsement; presumption.*—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue. [*Act approved March 7, 1903, § 45.*] (8th Sess. Chap. 121.)

5894. *Place of indorsement; presumption.*—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated. [*Act approved March 7, 1903, § 46.*] (8th Sess. Chap. 121.)

5895. *Continuation of negotiable character.*—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [*Act approved March 7, 1903, § 47.*] (8th Sess. Chap. 121.)

5896. *Striking out indorsement.*—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers

subsequent to him, are hereby relieved from liability on the instrument. [*Act approved March 7, 1903, § 48.*] (8th Sess. Chap. 121.)

5897. *Transfer without indorsement; effect of.*—Where the holder of an instrument payable to his orders transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferer had therein, and the transferee acquires in addition, the right to have the indorsement of the transferer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [*Act approved March 7, 1903, § 49.*] (8th Sess. Chap. 121.)

5898. *When prior party may negotiate instrument.*—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [*Act approved March 7, 1903, § 50.*] (8th Sess. Chap. 121.)

ARTICLE V.

RIGHTS OF HOLDER.

Section 5899. *Right of holder to sue; payment.*

“ 5900. *What constitutes a holder in due course.*

“ 5901. *When person not deemed holder in due course.*

“ 5902. *Notice before full amount paid.*

“ 5903. *When title defective.*

“ 5904. *What constitutes notice of defect.*

“ 5905. *Rights of holder in due course.*

“ 5906. *When subject to original defenses.*

“ 5907. *Who deemed holder in due course.*

5899. *Right of holder to sue; payment.*—The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. [*Act approved March 7, 1903, § 51.*] (8th Sess. Chap. 121.)

5900. *What constitutes a holder in due course.*—A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;
2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact.

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [*Act approved March 7, 1903, § 52.*] (8th Sess. Chap. 121.)

5901. *When person not deemed holder in due course.*—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [Act approved March 7, 1903, § 53.] (8th Sess. Chap. 121.)

5902. *Notice before full amount paid.*—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [Act approved March 7, 1903, § 54.] (8th Sess. Chap. 121.)

5903. *When title defective.*—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. [Act approved March 7, 1903, § 55.] (8th Sess. Chap. 121.)

5904. *What constitutes notice of defect.*—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. [Act approved March 7, 1903, § 56.] (8th Sess. Chap. 121.)

5905. *Rights of holder in due course.*—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. [Act approved March 7, 1903, § 57.] (8th Sess. Chap. 121.)

5906. *When subject to original defenses.*—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defense as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [Act approved March 7, 1903, § 58.] (8th Sess. Chap. 121.)

5907. *Who deemed holder in due course.*—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last mentioned rule does not apply in

favor of a party who became bound on the instrument prior to the acquisition of such defective title. [*Act approved March 7, 1903, § 59.*] (8th Sess. Chap. 121.)

ARTICLE VI.

LIABILITIES OF PARTIES.

- Section 5908. Liability of maker.*
 “ 5909. *Liability of drawer.*
 “ 5910. *Liability of acceptor.*
 “ 5911. *When person deemed indorser.*
 “ 5912. *Liability of irregular indorser.*
 “ 5913. *Warranty; where negotiations by delivery, et cetera.*
 “ 5914. *Liability of general indorsers.*
 “ 5915. *Liability of indorser where paper negotiable by delivery.*
 “ 5916. *Order in which indorsers are liable.*
 “ 5917. *Liability of agent or broker.*

5908. *Liability of maker.*—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse. [*Act approved March 7, 1903, § 60.*] (8th Sess. Chap. 121.)

5909. *Liability of drawer.*—The drawer by drawing this instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. [*Act approved March 7, 1903, § 61.*] (8th Sess. Chap. 121.)

5910. *Liability of acceptor.*—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits,

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
 2. The existence of the payee and his then capacity to indorse.
- [*Act approved March 7, 1903, § 62.*] (8th Sess. Chap. 121.)

5911. *When person deemed indorser.*—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [*Act approved March 7, 1903, § 63.*] (8th Sess. Chap. 121.)

5912. *Liability of irregular indorser.*—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [Act approved March 7, 1903, § 64.] (8th Sess. Chap. 121.)

5913. *Warranty; where negotiation by delivery, et cetera.*—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants,

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes. [Act approved March 7, 1903, § 65.] (8th Sess. Chap. 121.)

5914. *Liability of general indorser.*—Every indorser who indorses without qualification warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivisions one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [Act approved March 7, 1903, § 66.] (8th Sess. Chap. 121.)

5915. *Liability of indorser where paper negotiable by delivery.*—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. [Act approved March 7, 1903, § 67.] (8th Sess. Chap. 121.)

5916. *Order in which indorsers are liable.*—As respects one another, indorsers are liable prima facie in the order in which

they indorse; but evidence is admissable to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. [Act approved March 7, 1903, § 68.] (8th Sess. Chap. 121.)

5917. *Liability of agent or broker.*—Where a broker or agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 5913 (65) of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. [Act approved March 7, 1903, § 69.] (8th Sess. Chap. 121.)

ARTICLE VII.

PRESENTMENT FOR PAYMENT.

Section 5918. *Effect of want of demand on principal debtor.*

“ 5919. *Presentment where instrument is not payable on demand.*

“ 5920. *What constitutes a sufficient presentment.*

“ 5921. *Place of presentment.*

“ 5922. *Instrument must be exhibited.*

“ 5923. *Presentment where instrument payable at bank.*

“ 5924. *Presentment where principal debtor is dead.*

“ 5925. *Presentment to persons liable as partners.*

“ 5926. *Presentment to joint debtors.*

“ 5927. *When presentment not required to charge the drawer.*

“ 5928. *When presentment not required to charge the indorser.*

“ 5929. *When delay in making presentment is excused.*

“ 5930. *When presentment may be dispensed with.*

“ 5931. *When instrument dishonored by non-payment.*

“ 5932. *Liability of person secondarily liable, when instrument dishonored.*

“ 5933. *Time of maturity.*

“ 5934. *Time; how computed.*

“ 5935. *Rule where instrument payable at bank.*

“ 5936. *What constitutes payment in due course.*

5918. *Effect of want of demand on principal debtor.*—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [Act approved March 7th, 1903, § 70.] (8th Sess. Chap. 121.)

5919. *Presentment where instrument is not payable on demand.*—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient, if made within a reasonable time after the last negotiation thereof. [Act approved March 7, 1903, § 71.] (8th Sess. Chap. 121.)

5920. *What constitutes a sufficient presentment.*—Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;
2. At a reasonable hour on a business day;
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [Act approved March 7, 1903, § 72.] (8th Sess. Chap. 121.)

5921. *Place of presentment.*—Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;
2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;
3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [Act approved March 7, 1903, § 73.] (8th Sess. Chap. 121.)

5922. *Instrument must be exhibited.*—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [Act approved March 7, 1903, § 74.] (8th Sess. Chap. 121.)

5923. *Presentment where instrument payable at bank.*—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [Act approved March 7, 1903, § 75.] (8th Sess. Chap. 121.)

5924. *Presentment where principal debtor is dead.*—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made

to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found. [*Act approved March 7, 1903, § 76.*] (8th Sess. Chap. 121.)

5925. *Presentment to persons liable as partners.*—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [*Act approved March 7, 1903, § 77.*] (8th Sess. Chap. 121.)

5926. *Presentment to joint debtors.*—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. [*Act approved March 7, 1903, § 78.*] (8th Sess. Chap. 121.)

5927. *When presentment not required to charge the drawer.*—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [*Act approved March 7, 1903, § 79.*] (8th Sess. Chap. 121.)

5928. *When presentment not required to charge the indorser.*—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. [*Act approved March 7, 1903, § 80.*] (8th Sess. Chap. 121.)

5929. *When delay in making presentment is excused.*—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. [*Act approved March 7, 1903, § 81.*] (8th Sess. Chap. 121.)

5930. *When presentment may be dispensed with.*—Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment, express or implied. [*Act approved March 7, 1903, § 82.*] (8th Sess. Chap. 121.)

5931. *When instrument dishonored by non-payment.*—The instrument is dishonored by non-payment when,

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid. [*Act approved March 7, 1903, § 83.*] (8th Sess. Chap. 121.)

5932. *Liability of person secondarily liable, when instrument dishonored.*—Subject to the provisions of this act, when the in-

strument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. [Act approved March 7, 1903, § 84.] (8th Sess. Chap. 121.)

5933. *Time of maturity.*—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. [Act approved March 7, 1903, § 85.] (8th Sess. Chap. 121.)

5934. *Time; how computed.*—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [Act approved March 7, 1903, § 86.] (8th Sess. Chap. 121.)

5935. *Rule where instrument payable at bank.*—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [Act approved March 7, 1903, § 87.] (8th Sess. Chap. 121.)

5936. *What constitutes payment in due course.*—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [Act approved March 7, 1903, § 88.] (8th Sess. Chap. 121.)

ARTICLE VIII.

NOTICE OF DISHONOR.

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| Section | 5937. | <i>To whom notice of dishonor must be given.</i> |
| " | 5938. | <i>By whom given.</i> |
| " | 5939. | <i>Notice given by agent.</i> |
| " | 5940. | <i>Effect of notice given on behalf of holder.</i> |
| " | 5941. | <i>Effect where notice is given by party entitled thereto.</i> |
| " | 5942. | <i>When agent may give notice.</i> |
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| " | 5946. | <i>Notice where party is dead.</i> |
| " | 5947. | <i>Notice to partners.</i> |
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- Section 5950. Time within which notice must be given.*
“ 5951. *Where parties reside in same place.*
“ 5952. *Where parties reside in different places.*
“ 5953. *When sender deemed to have given due notice.*
“ 5954. *Deposit in post-office, what constitutes.*
“ 5955. *Notice to subsequent party, time of.*
“ 5956. *When notice must be sent.*
“ 5957. *Waiver of notice.*
“ 5958. *Whom affected by waiver.*
“ 5959. *Waiver of protest.*
“ 5960. *When notice dispensed with.*
“ 5961. *Delay in giving notice; how excused.*
“ 5962. *When notice need not be given to drawer.*
“ 5963. *When notice need not be given to indorser.*
“ 5964. *Notice of non-payment where acceptance refused.*
“ 5965. *Effect of omission to give notice of non-acceptance.*
“ 5966. *When protest need not be made; when must be made.*

5937. *To whom notice of dishonor must be given.*—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. [Act approved March 7, 1903, § 89.] (8th Sess. Chap. 121.)

5938. *By whom given.*—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it, to the holder, and who, upon taking it up would have a right to reimbursement from the party to whom the notice is given. [Act approved March 7, 1903, § 90:] (8th Sess. Chap. 121.)

5939. *Notice given by agent.*—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [Act approved March 7, 1903, § 91.] (8th Sess. Chap. 121.)

5940. *Effect of notice given on behalf of holder.*—Where such notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [Act approved March 7, 1903, § 92.] (8th Sess. Chap. 121.)

5941. *Effect where notice is given by party entitled thereto.*—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given. [Act approved March 7, 1903, § 93.] (8th Sess. Chap. 121.)

5942. *When agent may give notice.*—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder. [*Act approved March 7, 1903, § 94.*] (8th Sess. Chap. 121.)

5943. *When notice sufficient.*—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [*Act approved March 7, 1903, § 95.*] (8th Sess. Chap. 121.)

5944. *Form of notice.*—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-payment. It may in all cases be given by delivering it personally or through the mails. [*Act approved March 7, 1903, § 96.*] (8th Sess. Chap. 121.)

5945. *To whom notice may be given.*—Notice of dishonor may be given either to the party himself or to his agent in that behalf. [*Act approved March 7, 1903, § 97.*] (8th Sess. Chap. 121.)

5946. *Notice where party is dead.*—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [*Act approved March 7, 1903, § 98.*], (8th Sess. Chap. 121.)

5947. *Notice to partners.*—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. [*Act approved March 7, 1903, § 99.*] (8th Sess. Chap. 121.)

5948. *Notice to persons jointly liable.*—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. [*Act approved March 7, 1903, § 100.*] (8th Sess. Chap. 121.)

5949. *Notice to bankrupt.*—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [*Act approved March 7, 1903, § 101.*] (8th Sess. Chap. 121.)

5950. *Time within which notice must be given.*—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act. [*Act approved March 7, 1903, § 102.*] (8th Sess. Chap. 121.)

5951. *Where parties reside in same place.*—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the postoffice in time to reach him in usual course on the day following. [*Act approved March 7, 1903, § 103.*] (8th Sess. Chap. 121.)

5952. *Where parties reside in different places.*—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision. [*Act approved March 7, 1903, § 104.*] (8th Sess. Chap. 121.)

5953. *When sender deemed to have given due notice.*—Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [*Act approved March 7, 1903, § 105.*] (8th Sess. Chap. 121.)

5954. *Deposit in post-office; what constitutes.*—Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department. [*Act approved March 7, 1903, § 106.*] (8th Sess. Chap. 121.)

5955. *Notice to subsequent party; time of.*—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [*Act approved March 7, 1903, § 107.*] (8th Sess. Chap. 121.)

5956. *Where notice must be sent.*—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. [*Act approved March 7, 1903, § 108.*] (8th Sess. Chap. 121.)

5957. *Waiver of notice.*—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. [*Act approved March 7, 1903, § 109.*] (8th Sess. Chap. 121.)

5958. *Whom affected by waiver.*—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. [*Act approved March 7, 1903, § 110.*] (8th Sess. Chap. 121.)

5959. *Waiver of protest.*—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a former protest, but also of presentment and notice of dishonor. [*Act approved March 7, 1907, § 111.*] (8th Sess. Chap. 121.)

5960. *When notice is dispensed with.*—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. [*Act approved March 7, 1903, § 112.*] (8th Sess. Chap. 121.)

5961. *Delay in giving notice; how excused.*—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [*Act approved March 7, 1903, § 113.*] (8th Sess. Chap. 121.)

5962. *When notice need not be given to drawer.*—Notice of dishonor is not required to be given to the drawer in either of the following cases:—

1. Where the drawer and drawee are the same person;
2. When the drawee is a fictitious person or a person not having capacity to contract;
3. When the drawer is the person to whom the instrument is presented for payment;
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
5. When the drawer has countermanded payment. [*Act approved March 7, 1903, § 114.*] (8th Sess. Chap. 121.)

5963. *When notice need not be given to indorser.*—Notice of dishonor is not required to be given to an indorser in either of the following cases:—

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation. [*Act approved March 7, 1903, § 115.*] (8th Sess. Chap. 121.)

5964. *Notice of non-payment where acceptance refused.*—Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted. [*Act approved March 7, 1903, § 116.*] (8th Sess. Chap. 121.) ..

5965. *Effect of omission to give notice of non-acceptance.*—An omission to give notice of dishonor by non-acceptance does not prejudice the right of a holder in due course subsequent to the omission. [*Act approved March 7, 1903, § 117.*] (8th Sess. Chap. 121.)

5966. *When protest need not be made; when must be made.*—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [*Act approved March 7, 1903, § 118.*] (8th Sess. Chap. 121.)

ARTICLE IX.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

Section 5967. Instrument, how discharged.

“ 5968. *When persons secondarily liable on, discharged.*

“ 5969. *Right of party who discharges instrument.*

“ 5970. *Renunciation by holder.*

“ 5971. *Cancellation; unintentional; burden of proof.*

“ 5972. *Alteration of instrument; effect of.*

“ 5973. *What constitutes a material alteration.*

5967. *Instrument; how discharged.*—A negotiable instrument is discharged:—

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [*Act approved March 7, 1903, § 119.*] (*8th Sess. Chap. 121.*)

5968. *When person secondarily liable on, discharged.*—A person secondarily liable on the instrument is discharged:—

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;
4. By a valid tender of payment made by a prior party;
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. [*Act approved March 7, 1903, § 120.*] (*8th Sess. Chap. 121.*)

5969. *Right of party who discharges instrument.*—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except;—

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [*Act approved March 7, 1903, § 121.*] (*8th Sess. Chap. 121.*)

5970. *Renunciation by holder.*—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not effect the right of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. [*Act approved March 7, 1903, § 122.*] (*8th Sess. Chap. 121.*)

5971. *Cancellation; unintentional; burden of proof.*—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation is made unintentionally, or under a mistake or without authority. [*Act approved March 7, 1903, § 123.*] (*8th Sess. Chap. 121.*)

5972. *Alteration of instrument; effect of.*—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. [Act approved March 7, 1903, § 124.] (8th Sess. Chap. 121.)

5973. *What constitutes a material alteration.*—Any alteration which changes,—

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [Act approved March 7, 1903, § 125.] (8th Sess. Chap. 121.)

ARTICLE X.

BILLS OF EXCHANGE. FORM AND INTERPRETATION.

Section 5974. *Bill of exchange defined.*

“ 5975. *Bill not an assignment of funds in hands of drawee.*

“ 5976. *Bill addressed to more than one drawee.*

“ 5977. *Inland and foreign bills of exchange.*

“ 5978. *When bill may be treated as promissory note.*

“ 5979. *Drawee in case of need.*

5974. *Bill of exchange defined.*—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. [Act approved March 7, 1903, § 126.] (8th Sess. Chap. 121.)

5975. *Bill not an assignment of funds in hands of drawee.*—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available, for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. [Act approved March 7, 1903, § 127.] (8th Sess. Chap. 121.)

5976. *Bill addressed to more than one drawee.*—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [Act approved March 7, 1903, § 128.] (8th Sess. Chap. 121.)

5977. *Inland and foreign bills of exchange.*—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [Act approved March 7, 1903, § 129.] (8th Sess. Chap. 121.)

5978. *When bill may be treated as promissory note.*—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [Act approved March 7, 1903, § 130.] (8th Sess. Chap. 121.)

5979. *Drawee in case of need.*—The drawee of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [Act approved March 7, 1903, § 131.] (8th Sess. Chap. 121.)

ARTICLE XI.

ACCEPTANCE.

Section 5980. *Acceptance, how made, et cetera.*

- " 5981. *Holder entitled to acceptance on face of bill.*
- " 5982. *Acceptance by separate instrument.*
- " 5983. *Promise to accept; when equivalent to acceptance.*
- " 5984. *Time allowed drawee to accept.*
- " 5985. *Liability of drawee retaining or destroying bill.*
- " 5986. *Acceptance of incomplete bill.*
- " 5987. *Kinds of acceptance.*
- " 5988. *What constitutes a general acceptance.*
- " 5989. *Qualified acceptance.*
- " 5990. *Rights of parties as to qualified acceptance.*

5980. *Acceptance, how made, et cetera.*—The acceptance of a bill is signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. [Act approved March 7, 1903, § 132.] (8th Sess. Chap. 121.)

5981. *Holder entitled to acceptance on face of bill.*—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. [Act approved March 7, 1903, § 133.] (8th Sess. Chap. 121.)

5982. *Acceptance by separate instrument.*—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [Act approved March 7, 1903, § 134.] (8th Sess. Chap. 121.)

5983. *Promise to accept; when equivalent to acceptance.*—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [Act approved March 7, 1903, § 135.] (8th Sess. Chap. 121.)

5984. *Time allowed drawee to accept.*—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation. [Act approved March 7, 1903, § 136.] (8th Sess. Chap. 121.)

5985. *Liability of drawee retaining or destroying bill.*—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. [Act approved March 7, 1903, § 137.] (8th Sess. Chap. 121.)

5986. *Acceptance of incomplete bill.*—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. [Act approved March 7, 1903, § 138.] (8th Sess. Chap. 121.)

5987. *Kinds of acceptance.*—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. [Act approved March 7, 1903, § 139.] (8th Sess. Chap. 121.)

5988. *What constitutes a general acceptance.*—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. [Act approved March 7, 1903, § 140.] (8th Sess. Chap. 121.)

5989. *Qualified acceptance.*—An acceptance is qualified, which is:—

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all. [*Act approved March 7, 1903, § 141.*] (8th Sess. Chap. 121.)

5990. *Rights of parties as to qualified acceptance.*—The holder may refuse to take a qualified acceptance and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [*Act approved March 7, 1903, § 142.*] (8th Sess. Chap. 121.)

ARTICLE XII.

PRESENTMENT FOR ACCEPTANCE.

Section 5991. When presentment for acceptance must be made.

“ 5992. *When failure to present releases drawer and indorser.*

“ 5993. *Presentment; how made.*

“ 5994. *On what days presentment may be made.*

“ 5995. *Presentment; where time is insufficient.*

“ 5996. *When presentment is excused.*

“ 5997. *When dishonored by non-acceptance.*

“ 5998. *Duty of holder where bill not accepted.*

“ 5999. *Rights of holder where bill not accepted.*

5991. *When presentment for acceptance must be made.*—Presentment for acceptance must be made:—

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [*Act approved March 7, 1903, § 143.*] (8th Sess. Chap. 121.)

5992. *When failure to present releases drawer and indorser.*—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. [Act approved March 7, 1903, § 144.] (8th Sess. Chap. 121.)

5993. *Presentment; how made.*—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day and before the bill is overdue, to the drawer or some person authorized to accept or refuse acceptance on his behalf; and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [Act approved March 7, 1903, § 145.] (8th Sess. Chap. 121.)

5994. *On what days presentment may be made.*—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Sections 5920 (72) and 5933 (85) of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day. [Act approved March 7, 1903, § 146.] (8th Sess. Chap. 121.)

5995. *Presentment where time is insufficient.*—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [Act approved March 7, 1903, § 147.] (8th Sess. Chap. 121.)

5996. *Where presentment is excused.*—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:—

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground. [*Act approved March 7, 1903, § 148.*] (8th Sess. Chap. 121.)

5997. *When dishonored by non-acceptance.*—A bill is dishonored by non-acceptance,—

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted. [*Act approved March 7, 1903, § 149.*] (8th Sess. Chap. 121.)

5998. *Duty of holder where bill not accepted.*—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. [*Act approved March 7, 1903, § 150.*] (8th Sess. Chap. 121.)

5999. *Rights of holder where bill not accepted.*—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [*Act approved March 7, 1903, § 151.*] (8th Sess. Chap. 121.)

ARTICLE XIII.

PROTEST.

Section 6000. In what cases protest necessary.

“ 6001. *Protest; how made.*

“ 6002. *Protest; by whom made.*

“ 6003. *Protest; when to be made.*

“ 6004. *Protest; where made.*

“ 6005. *Protest both for non-acceptance and non-payment.*

“ 6006. *Protest before maturity where acceptor insolvent.*

“ 6007. *When protest dispensed with.*

“ 6008. *Protest; where bill is lost, et cetera.*

6000. *In what cases protest necessary.*—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. [*Act approved March 7, 1903, § 152.*] (8th Sess. Chap. 121.)

6001. *Protest; how made.*—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:—

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [*Act approved March 7, 1903, § 153.*] (8th Sess. Chap. 121.)

6002. *Protest; by whom made.*—Protest may be made, by,—

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [*Act approved March 7, 1903, § 154.*] (8th Sess. Chap. 121.)

6003. *Protest; when to be made.*—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [*Act approved March 7, 1903, § 155.*] (8th Sess. Chap. 121.)

6004. *Protest; where made.*—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable and no further presentment for payment to, or demand on, the drawee is necessary. [*Act approved March 7, 1903, § 156.*] (8th Sess. Chap. 121.)

6005. *Protest both for non-acceptance and non-payment.*—A bill which has been protested for non-acceptance may be subsequently protested for non-payment. [*Act approved March 7, 1903, § 157.*] (8th Sess. Chap. 121.)

6006. *Protest before maturity where acceptor insolvent.*—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [*Act approved March 7, 1903, § 158.*] (8th Sess. Chap. 121.)

6007. *When protest dispensed with.*—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [*Act approved March 7, 1903, § 159.*] (8th Sess. Chap. 121.)

6008. *Protest where bill is lost, et cetera.*—When a bill is lost or destroyed or is wrongfully detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [Act approved March 7, 1903, § 160.] (8th Sess. Chap. 121.)

ARTICLE XIV.

ACCEPTANCE FOR HONOR.

Section 6009. *When bill may be accepted for honor.*

“ 6010. *Acceptance for honor; how made.*

“ 6011. *When deemed to be an acceptance for honor of the drawer.*

“ 6012. *Liability of acceptor for honor.*

“ 6013. *Agreement of acceptor for honor.*

“ 6014. *Maturity of bill payable after sight; accepted for honor.*

“ 6015. *Protest of bill accepted for honor, et cetera.*

“ 6016. *Presentment for payment to acceptor for honor; how made.*

“ 6017. *When delay in making presentment is excused.*

“ 6018. *Dishonor of bill by acceptor for honor.*

6009. *When bill may be accepted for honor.*—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. [Act approved March 7, 1903, § 161.] (8th Sess. Chap. 121.)

6010. *Acceptance for honor; how made.*—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [Act approved March 7, 1903, § 162.] (8th Sess. Chap. 121.)

6011. *When deemed to be an acceptance for honor of the drawer.*—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [Act approved March 7, 1903, § 163.] (8th Sess. Chap. 121.)

6012. *Liability of acceptor for honor.*—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [Act approved March 7, 1903, § 164.] (8th Sess. Chap. 121.)

6013. *Agreement of acceptor for honor.*—The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, *provided* it shall not have been paid by the drawee, *and provided* also, that it shall have been duly presented for payment and protested for non payment and notice of dishonor given to him. [Act approved March 7, 1903, § 165.] (8th Sess. Chap. 121.)

6014. *Maturity of bill payable after sight; accepted for honor.*—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. [Act approved March 7, 1903, § 166.] (8th Sess. Chap. 121.)

6015. *Protest of bill accepted for honor, et cetera.*—Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need. [Act approved March 7, 1903, § 167.] (8th Sess. Chap. 121.)

6016. *Presentment for payment to acceptor for honor; how made.*—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 5952 (104). [Act approved March 7, 1903, § 168.] (8th Sess. Chap. 121.)

6017. *When delay in making presentment is excused.*—The provisions of section 5929 (81) apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [Act approved March 7, 1903, § 169.] (8th Sess. Chap. 121.)

6018. *Dishonor of bill by acceptor for honor.*—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. [Act approved March 7, 1903, § 170.] (8th Sess. Chap. 121.)

ARTICLE XV.

PAYMENT FOR HONOR.

Section 6019. Who may make payment for honor.

“ 6020. *Payment for honor; how made.*

“ 6021. *Declaration before payment for honor.*

“ 6022. *Preference of parties offering to pay for honor.*

“ 6023. *Effect on subsequent parties where bill is paid for honor.*

“ 6024. *Where holder refuses to receive payment supra protest.*

“ 6025. *Rights of payer for honor.*

6019. *Who may make payment for honor.*—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [Act approved March 7, 1903, § 171.] (8th Sess. Chap. 121.)

6020. *Payment for honor; how made.*—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. [Act approved March 7, 1903, § 172.] (8th Sess. Chap. 121.)

6021. *Declaration before payment for honor.*—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. [Act approved March 7, 1903, § 173.] (8th Sess. Chap. 121.)

6022. *Preference of parties offering to pay for honor.*—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [Act approved March 7, 1903, § 174.] (8th Sess. Chap. 121.)

6023. *Effect on subsequent parties where bill is paid for honor.*—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds, to both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [Act approved March 7, 1903, § 175.] (8th Sess. Chap. 121.)

6024. *Where holder refuses to receive payment supra protest.*—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [Act approved March 7, 1903, § 176.] (8th Sess. Chap. 121.)

6025. *Rights of payer for honor.*—The payer for honor, on paying to the holder the amount of the bill and the notarial ex-

penses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [Act approved March 7, 1903, § 177.] (8th Sess. Chap. 121.)

ARTICLE XVI.

BILLS IN A SET.

Section 6026. Bills in sets constitute one bill.

“ 6027. *Rights of holders where different parts are negotiated.*

“ 6028. *Liability of holder who indorses two or more parts of a set to different persons.*

“ 6029. *Acceptance of bills drawn in sets.*

“ 6030. *Payment of acceptor of bills drawn in sets.*

“ 6031. *Effect of discharging one of a set.*

6026. *Bills in sets constitute one bill.*—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. [Act approved March 7, 1903, § 178.] (8th Sess. Chap. 121.)

6027. *Rights of holders where different parts are negotiated.*—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course, accepts or pays the part first presented to him. [Act approved March 7, 1903, § 179.] (8th Sess. Chap. 121.)

6028. *Liability of holder who indorses two or more parts of a set to different persons.*—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [Act approved March 7, 1903, § 180.] (8th Sess. Chap. 121.)

6029. *Acceptance of bills drawn in sets.*—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [Act approved March 7, 1903, § 181.] (8th Sess. Chap. 121.)

6030. *Payment by acceptor of bills drawn in sets.*—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [Act approved March 7, 1903, § 182.] (8th Sess. Chap. 121.)

6031. *Effect of discharging one of a set.*—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [Act approved March 7, 1903, § 183.] (8th Sess. Chap. 121.)

ARTICLE XVII.

PROMISSORY NOTES AND CHECKS.

Section 6032. Promissory note defined.

“ 6033. *Check defined.*

“ 6034. *Within what time a check must be presented.*

“ 6035. *Certification of check; effect of.*

“ 6036. *Effect where holder of check procures it to be certified.*

“ 6037. *When check operates as an assignment.*

6032. *Promissory note defined.*—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [Act approved March 7, 1903, § 184.] (8th Sess. Chap. 121.)

6033. *Check defined.*—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. [Act approved March 7, 1903, § 185.] (8th Sess. Chap. 121.)

6034. *Within what time a check must be presented.*—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [Act approved March 7, 1903, § 186.] (8th Sess. Chap. 121.)

6035. *Certification of check; effect of.*—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [Act approved March 7, 1903, § 187.] (8th Sess. Chap. 121.)

6036. *Effect where holder of check procures it to be certified.*—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. [Act approved March 7, 1903, § 188.] (8th Sess. Chap. 121.)

6037. *When check operates as an assignment.*—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not

liable to the holder, unless and until it accepts or certifies the check. [*Act approved March 7, 1903, § 189.*] (*8th Sess. Chap. 121.*)

Stadler v. Bank, 22 Mont. 204; 56 Pac. 114.

Bullard v. Smith, 28 Mont. 399; 72 Pac. 764.

TITLE XVI.

GENERAL PROVISIONS.

6037a. (§ 4240.) Except where it is otherwise declared, the provisions of the last foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver be against public policy.

DIVISION FOURTH.

PART I. RELIEF.

II. SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

III. NUISANCE.

IV. MAXIMS OF JURISPRUDENCE.

V. DEFINITIONS AND GENERAL PROVISIONS.

PART I.

RELIEF.

TITLE I. RELIEF IN GENERAL.

II. COMPENSATORY RELIEF.

III. SPECIFIC AND PREVENTIVE RELIEF.

TITLE I.

RELIEF IN GENERAL.

Section 6038. Species of relief.

“ 6039. *Relief in case of forfeiture.*

6038. (§ 4260.) *Species of relief.*—As a general rule, compensation is the relief or remedy provided by the law of this state for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the Civil Code.

Spreckles v. Hawaiian Co., 117 Cal. 379; 49 Pac. 353.

6039. (§ 4261.) *Relief in case of forfeiture.*—Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, wilful or fraudulent breach of duty.

Parsons v. Smilie, 97 Cal. 654; 32 Pac. 702.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I. DAMAGES IN GENERAL.

II. MEASURE OF DAMAGES.

CHAPTER I.

DAMAGES IN GENERAL.

ARTICLE I. GENERAL PRINCIPLES.

II. INTEREST AS DAMAGES.

III. EXEMPLARY DAMAGES.

ARTICLE I.

GENERAL PRINCIPLES.

Section 6040. Person suffering detriment may recover damages.

“ 6041. *Detriment, what.*

“ 6042. *Injuries resulting or probable after suit brought.*

6040. (§ 4270.) *Person suffering detriment may recover damages.*—Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault, a compensation therefor in money, which is called damages.

Thornton Co. v. Bretherton, 32 Mont. 98; 80 Pac. 15. The measure of damages for wrongfully procuring the appointment of a receiver for a going and solvent corporation is the amount which will afford compensation for the detriment proximately caused by the wrongful act of defendants, which, in case of the wrongful conversion of personal prop-

erty, is presumed to be the value of the property at the time of conversion, with interest from that time, or the highest market value of the property at any time between the conversion and the verdict, without interest, and a fair compensation for the time and money properly expended in pursuit of the property.

6041. (§ 4271.) *Detriment, what.*—Detriment is a loss or harm suffered in person or property.

6042. (§ 4272.) *Injuries resulting or probable after suit brought.*—Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof, or certain to result in the future.

Keyes v. Moy Jin Mun, 136 Cal. 130; 68 Pac. 476.

ARTICLE II.

INTEREST AS DAMAGES.

Section 6043. Person entitled to recover damages may recover interest thereon.

“ 6044. *In actions other than contract.*

“ 6045. *Limit of rate by contract.*

“ 6046. *Acceptance of principal waives claim to interest.*

6043. (§ 4280.) *Person entitled to recover damages may recover interest thereon.*—Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor from paying the debt.

Hefferlin v. Karlman, 29 Mont. 139; 74 Pac. 201. This section authorizes a recovery of interest on an open account from demand, and the institution of a suit on an open account for goods sold is a demand.

Finlen v. Heinze, 32 Mont. 390; 80 Pac. 928. Where plaintiff gave defendant an option to buy a lode mining claim, but before the payments agreed on became due denied the existence of the contract and sued to recover the property, he

was not entitled to interest on the purchase money, on specific performance being decreed against him, for the reason that he prevented defendant from making the payments.

Leggat v. Gerrick, 35 Mont. 95; 88 Pac. 788. In an action to recover a balance due a physician for medical services, interest seems to be allowable.

Cutting Co. v. Canty, 141 Cal. 597; 75 Pac. 564.

6044. (§ 4281.) *In actions other than contract.*—In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury.

Caledonia I. Co. v. N. P. R. Co., 32 Mont. 48; 79 Pac. 545. The right to recover damages for the negligent destruction of property by fire, together with

interest, is assignable.

King v. Southern P. Co., 109 Cal. 99; 41 Pac. 786.

6045. (§ 4282.) *Limit of rate by contract.*—Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superceded by a verdict of other new obligation.

Casey v. Gibbons, 136 Cal. 371; 68 Pac. 1032.

6046. (§ 4283.) *Acceptance of principal waives claim to interest.*—Accepting payment of the whole principal, as such, waives all claim to interest.

Valentine v. Donohoe Co., 133 Cal. 194; 65 Pac. 381.

ARTICLE III.

EXEMPLARY DAMAGES.

6047. (§ 4290.) In any action for a breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

Martin v. Corscadden, 34 Mont. 322; 86 Pac. 37. In order for plaintiff to recover punitive damages, in an action for malicious prosecution, in addition to those actually sustained, it is not necessary that he claim them *eo nomine* in his complaint.

Olsen v. M. O. P. Co., 35 Mont. 412; 89 Pac. 731. Damages by way of punishment in addition to those actually sus-

tained, may be recovered in an action against a mining company for the negligent and wrongful killing of the intestate of plaintiff, a miner, where the complaint charges that defendant company was primarily responsible for the death of decedent.

Greenberg v. Western Association, 140 Cal. 363; 73 Pac. 1050.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE " I. DAMAGES FOR BREACH OF CONTRACT.

II. DAMAGES FOR WRONGS.

III. PENAL DAMAGES.

IV. GENERAL PROVISIONS.

ARTICLE I.

DAMAGES FOR BREACH OF CONTRACT.

- Section 6048. *Measure of damages for breach of contract.*
- " 6049. *Damages must be certain.*
- " 6050. *Breach of contract to pay liquidated sum.*
- " 6051. *Dishonor of foreign bill of exchange.*
- " 6052. *Detriment caused by breach of covenant of seizin, etc., what is.*
- " 6053. *Detriment caused by breach of covenant against incumbrances, what is.*
- " 6054. *Breach of agreement to convey real property.*
- " 6055. *Breach of agreement to buy real property.*
- " 6056. *Breach of agreement to sell personal property not paid for.*
- " 6057. *Breach of agreement to sell personal property paid for.*
- " 6058. *Breach of agreement to pay for personal property sold.*
- " 6059. *Breach of agreement to buy personal property.*
- " 6060. *Breach of warranty of title to personal property.*
- " 6061. *Breach of warranty of quality of personal property.*
- " 6062. *Breach of warranty of quality for special purpose.*
- " 6063. *Breach of carrier's obligation to receive goods, etc.*
- " 6064. *Breach of carrier's obligation to deliver.*
- " 6065. *Carrier's delay.*
- " 6066. *Breach of warranty of authority.*
- " 6067. *Breach of promise of marriage.*

6048. (§ 4300.) *Measure of damages for breach of contract.*—For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which in the ordinary course of things would be likely to result therefrom.

Plymouth M. Co. v. U. S. Fidelity Co.,
35 Mont. 30; 88 Pac. 565.

Westwater v. Grace Church, 140 Cal.
342; 73 Pac. 1055.

6049. (§ 4301.) *Damages must be certain.*—No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

Brazell v. Cohn, 32 Mont. 563; 81 Pac.
341.

Westwater v. Grace Church, 140 Cal.
342; 73 Pac. 1055.

6050. (§ 4302.) *Breach of contract to pay liquidated sum.*—The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

Smiths' Store v. Bank, 149 Cal. 34; 84 Pac. 663.

6051. (§ 4303.) *Dishonor of foreign bill of exchange.*—For the dishonor of foreign bills of exchange damages are prescribed by §§ 4191, 4193, 4194.*

6052. (§ 4304.) *Detriment caused by breach of covenant of seizin, etc., what is.*—The detriment caused by the breach of a covenant of seizin, of "right to convey," of "warranty," or of "quiet enjoyment," in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor; or, if the breach is partial only, such proportion of the price as the value of the property effected by the breach bore at the time of the grant to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding five years.

3. Any expenses properly incurred by the covenantee in defending his possession.

Hoffman v. Kirby, 136 Cal. 29; 68 Pac. 321.

6053. (§ 4305.) *Detriment caused by breach of covenant against incumbrances, what is.*—The detriment caused by the breach of a covenant against incumbrances, in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof, not exceeding in the former case, a proportion of the price paid to the grantor equivalent to the relative value at the time of the grant of the property affected by the breach, as compared with the whole, or, in the latter case, interest on a like amount.

* These sections were repealed by Negotiable Instruments Act, ante § 5842 et seq.

6054. (§ 4306.) *Breach of agreement to convey real property.*—The detriment caused by the breach of an agreement to convey an estate in real property is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

Willard v. Smith, 34 Mont. 497; 87 Pac. 614. In an action for the breach of a contract to convey real property, bad faith was not alleged, but defendant was unable to convey it. The meas-

ure of damages could only be the amount paid to defendant on the purchase price and incidental expenses.

McCowen v. Pew, 147 Cal. 302; 81 Pac. 958.

6055. (§ 4307.) *Breach of agreement to buy real property.*—The detriment caused by the breach of an agreement to purchase an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller, under the contract, over the value of the property to him.

North Stockton Co. v. Fischer, 138 Cal. 104; 70 Pac. 1082.

6056. (§ 4308.) *Breach of agreement to sell personal property not paid for.*—The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

6057. (§ 4309.) *Breach of agreement to sell personal property paid for.*—The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of wrongful conversion.

6058. (§ 4310.) *Breach of agreement to pay for personal property sold.*—The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

6059. (§ 4311.) *Breach of agreement to buy personal property.*—The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold, pursuant to § 5803 (3933) the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by § 5803 (3933), the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred

in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

Brazell v. Cohn, 32 Mont. 567; 81 Pac. 342. Where defendants broke a contract to purchase all of plaintiff's milk at wholesale for a specified price per gallon for five years, plaintiff was

not thereafter required to change the character of his business, and sell his milk at retail, to reduce his damages.

Willson v. Gregory, 2 C. App. 314; 84 Pac. 356.

6060. (§ 4312.) *Breach of warranty of title to personal property.*—The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner.

6061. (§ 4313.) *Breach of warranty of quality of personal property.*—The detriment caused by the breach of a warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

Lander v. Sheehan, 32 Mont. 33; 79 Pac. 409.

Erie Works v. Tatum, 1 C. App. 291; 82 Pac. 92.

6062. (§ 4314.) *Breach of warranty of quality for special purpose.*—The detriment caused by the breach of a warranty of the fitness of an article of personal property for particular purposes is deemed to be that which is defined by the last section, together with a fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

Lander v. Sheehan, 32 Mont. 33; 79 Pac. 409.

6063. (§ 4315.) *Breach of carrier's obligation to receive goods, etc.*—The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

6064. (§ 4316.) *Breach of carrier's obligation to deliver.*—The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

Pierce v. Southern P. Co., 120 Cal. 159; 47 Pac. 874.

6065. (§ 4317.) *Carrier's delay.*—The detriment caused by a carrier's delay in the delivery of freight is deemed to be in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by

reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

6066. (§ 4318.) *Breach of warranty of authority.*—The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

6067. (§ 4319.) *Breach of promise of marriage.*—The damages for the breach of a promise of marriage rest in the sound discretion for the jury.

ARTICLE II.

DAMAGES FOR WRONGS.

Section 6068. Breach of obligation other than contract.

“ 6069. *Wrongful occupation of real property.*

“ 6070. *Wilful holding over.*

“ 6071. *Conversion of real property.*

“ 6072. *Same.*

“ 6073. *Damages of lienor.*

“ 6074. *Seduction.*

“ 6075. *Injuries to animals.*

6068. (§ 4330.) *Breach of obligation other than contract.*—For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

Coleman v. Perry, 28 Mont. 8; 72 Pac. 44. The doctrine of assumption of risk has no application to a case where an inexperienced laundry employe is directed to feed a mangle. Such employe injured by the negligence of defendants, is entitled to recover what would compensate for all damage proximately caused by the negligence of defendants, whether such damage could be anticipated or not.

Thornton Co. v. Bretherton, 32 Mont. 98; 80 Pac. 15.

Rourke v. Butte P. Co., 33 Mont. 287; 83 Pac. 475. In an action for personal injuries, the jury, in fixing the damages, may consider mental and physical suffering caused by the injury, wages plaintiff might have earned from the date of

the injury to the date of the trial, and if the injuries were permanent, any loss by reason of the impairment of his capacity to earn money. In this case, a verdict of \$20,000 for plaintiff was not set aside on appeal as excessive.

Murray v. Butte, 35 Mont. 169; 83 Pac. 789. Where a party injured through the maintenance of a nuisance by a city has abated it at his own expense, after a refusal by the city to remedy the evil, the outlay so incurred is a part of his detriment proximately caused by its maintenance, and recoverable as an element of his damages.

Fries v. American Co., 141 Cal. 613; 75 Pac. 164.

6069. (§ 4331.) *Wrongful occupation of real property.*—The detriment caused by the wrongful occupation of real property, in cases not embraced in §§ 6070 (4332), 6076 (4350) and 6077 (4351), of this code, or provided in the Code of Civil Procedure,

is deemed to be the value of the use of the property for the time of such occupation, not exceeding five years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

6070. (§ 4332.) *Wilful holding over*.—For wilfully holding over real property, by a person who entered upon the same, as guardian, or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

Jack v. Sinsheimer, 125 Cal. 566; 58 Pac. 130.

6071. (§ 4333.) *Conversion of real property*.—The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of its conversion, with the interest from that time; or, where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict, without interest, at the option of the injured party; and,

2. A fair compensation for the time and money properly expended in pursuit of the property.

Smith v. Caldwell, 22 Mont. 339; 56 Pac. 592.

Harrington v. Stromberg M. Co., 29 Mont. 160; 74 Pac. 414.

Thornton Co. v. Bretherton, 32 Mont. 98; 80 Pac. 15.

Doll v. Hennessy M. Co., 33 Mont. 89; 81 Pac. 627. The measure of damages in action brought by a partner to recover the value of his interest in the partnership property sold to a stranger by his copartner in violation of section 3232 *supra*, subdivision 3, is the reasonable value of the property at the date of the conversion, or the highest market value

at any time between the conversion and verdict.

Webster v. Sherman, 33 Mont. 459; 84 Pac. 882. In an action in claim and delivery, where all the evidence of value of the property was directed to the date of seizure, and it was not claimed it had any usable value, the damages for detention should have been limited to interest on the amount recovered from the date of seizure to the time the verdict was returned.

Nicholls v. Mapes, 1 C. App. 356; 82 Pac. 265.

6072. (§ 4334.) *Same*.—The presumption declared by the last section can not be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Lutey v. Clark, 31 Mont. 54; 77 Pac. 307.

Thornton Co. v. Bretherton, 32 Mont. 98; 80 Pac. 15.

6073. (§ 4335.) *Damages of lienor*.—One having a mere lien on personal property cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by § 6071 (4333) for the loss of time and expenses.

Wilkerson v. Thorp, 128 Cal. 226; 60 Pac. 679.

6074. (§ 4336.) *Seduction*.—The damages for seduction rest in the sound discretion of the jury.

6075. (§ 4337.) *Injuries to animals.*—For wrongful injuries to animals, being subjects of property, committed wilfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.

PENAL DAMAGES.

Section 6076. Failure to quit, after notice.

“ 6077. *Tenant wilfully holding over.*

“ 6078. *Injuries to trees, etc.*

“ 6079. *Injuries inflicted in a duel.*

“ 6080. *Same.*

6076. (§ 4350.) *Failure to quit, after notice.*—If any tenant gives notice of his intention to quit the premises and does not deliver up the possession at the time specified in the notice, he must pay to the landlord treble rent during the time he continues in possession after such notice.

6077. (§ 4351.) *Tenant wilfully holding over.*—If any tenant, or any person in collusion with the tenant, holds over any lands or tenements after demand made and one month's notice, in writing given, requiring the possession thereof, such person holding over must pay to the landlord treble rent during the time he continues in possession after such notice.

Hayden v. Collins, 1 C. App. 261; 81 Pac. 1120.

6078. (§ 4352.) *Injuries to trees, etc.*—For wrongful injuries to timber, trees, or underwood upon the land of another, or removal thereof, the measure of damage is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers, for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

Stewart v. Sefton, 108 Cal. 207; 41 Pac. 293.

6079. (§ 4353.) *Injuries inflicted in a duel.*—If any person slays or permanently disables another person in a duel in this state, the slayer must provide for the maintenance of the widow or wife of the person slain or permanently disabled, and for the minor children, in such manner and at such cost, either by aggregate compensation in damages to each, or by a monthly, quarterly, or annual allowance, to be determined by the court.

6080. (§ 4354.) *Same.*—If any person slays or disables another person in a duel in this state, the slayer is liable for and must pay all debts of the person slain or permanently disabled.

ARTICLE IV.

GENERAL PROVISIONS.

- Section 6081. *Value, how estimated in favor of seller.*
 “ 6082. *Value, how estimated in favor of buyer.*
 “ 6083. *Property of peculiar value.*
 “ 6084. *Value of thing in action.*
 “ 6085. *Damages allowed in this chapter, exclusive of others.*
 “ 6086. *Limitation of damages.*
 “ 6087. *Damages to be reasonable.*
 “ 6088. *Nominal damages.*

6081. (§ 4360.) *Value, how estimated in favor of seller.*—In estimating damages the value of property to the seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

Willson v. Gregory, 2 C. App. 314; 84 Pac. 356.

6082. (§ 4361.) *Value, how estimated in favor of buyer.*—In estimating damages, except as provided by §§ 6083 (4362) and 6084 (4363), the value of property to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

6083. (§ 4362.) *Property of peculiar value.*—Where a certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a wilful wrongdoer.

6084. (§ 4363.) *Value of thing in action.*—For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

6085. (§ 4364.) *Damages allowed in this chapter, exclusive of others.*—The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

Hewes v. Germain Co., 106 Cal. 447; 39 Pac. 853.

6086. (§ 4365.) *Limitation of damages.*—Notwithstanding the provisions of this chapter, no person can recover a greater

amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in the articles on exemplary damages, penal damages, and in §§ 6067 (4319), 6074 (4336), 6075 (4337).

6087. (§ 4366.) *Damages to be reasonable.*—Damages must in all cases be reasonable, and where an obligation of any kind appears to create a right to unconsonable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

6088. (§ 4367.) *Nominal damages.*—When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

Maher v. Wilson, 139 Cal. 520; 73 Pac. 418.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I. GENERAL PRINCIPLES.

II. SPECIFIC RELIEF.

III. PREVENTIVE RELIEF.

CHAPTER I.

GENERAL PRINCIPLES.

Section 6089. Specific relief, etc., when allowed.

“ 6090. *Specific relief, how given.*

“ 6091. *Preventive relief, how given.*

“ 6092. *Not to enforce penalty, etc.*

6089. (§ 4380.) *Specific relief, etc., when allowed.*—Specific or preventive relief may be given in the cases specified in this title, and in no others.

6090. (§ 4381.) *Specific relief, how given.*—Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant.

2. By compelling the party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Murphy v. Hopcroft, 142 Cal. 46; 75 Pac. 567.

6091. (§ 4382.) *Preventive relief, how given.*—Preventive relief is given by prohibiting a party from doing that which ought not to be done.

6092. (§ 4383.) *Not to enforce penalty, etc.*—Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, or to enforce the penalty or forfeiture in any case.

Pogue v. Kaweah Co., 138 Cal. 665; 72 Pac. 144.

CHAPTER II.

SPECIFIC RELIEF.

- ARTICLE I. POSSESSION OF REAL PROPERTY.
II. POSSESSION OF PERSONAL PROPERTY.
III. SPECIFIC PERFORMANCE OF OBLIGATIONS.
IV. REVISION OF CONTRACTS.
V. RESCISSION OF CONTRACTS.
VI. CANCELLATION OF INSTRUMENTS.

ARTICLE I.

POSSESSION OF REAL PROPERTY.

6093. (§ 4390.) A person entitled to specific real property, by reason either of a perfected title or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the Code of Civil Procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property.

ARTICLE II.

POSSESSION OF PERSONAL PROPERTY.

Section 6094. Judgment for delivery.

“ 6095. *When holder may be compelled to deliver.*

6094. (§ 4400.) *Judgment for delivery.*—A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

6095. (§ 4401.) *When holder may be compelled to deliver.*—Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

ARTICLE III.

SPECIFIC PERFORMANCE OF OBLIGATIONS.

Section 6096. In what cases compelled.

“ 6097. *Remedy mutual.*

“ 6098. *No remedy unless mutual.*

“ 6099. *Distinction between real and personal property.*

“ 6100. *Contract signed by one party only may be enforced by others.*

“ 6101. *Liquidation of damages not a bar to specific performance.*

Section 6102. What cannot be specifically enforced.

“ 6103. *What parties cannot be compelled to perform.*

“ 6104. *What parties cannot have specific performance in their favor.*

“ 6105. *Specific performance not required when oppressive.*

“ 6106. *Agreement to sell property by one who has no title.*

“ 6107. *Relief against parties claiming under the person bound to perform.*

6096. (§ 4410.) *In what cases compelled.*—Except as otherwise provided in this article the specific performance of an obligation may be compelled:

1. When the act to be done is in the performance, wholly or partly of an express trust.

2. When the act to be done is such that pecuniary compensation for its non-performance would not afford adequate relief.

3. When it would be extremely difficult to ascertain the actual damage caused by the non-performance of the act to be done; or,

4. When it has been expressly agreed, in writing, between the parties to the contract, that specific performance thereof may be required by either party, or that damages shall not be considered adequate relief.

Christiansen v. Aldrich, 30 Mont. 450; 76 Pac. 1008. A complaint alleged breach of a contract to convey land and it was sufficient to raise the presumption that pecuniary compensation would not afford adequate relief, though there was

no allegation of special circumstances showing that plaintiff had no adequate remedy at law.

Fleishman v. Woods, 135 Cal. 260; 67 Pac. 276.

6097. (§ 4411.) *Remedy mutual.*—When either of the parties to an obligation is entitled to a specific performance thereof, according to the provisions of the last section, the other party is also entitled to it, though not within those provisions.

6098. (§ 4412.) *No remedy unless mutual.*—Neither party to any obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely, or nearly so, together with full compensation for any want of entire performance.

Finlen v. Heinze, 32 Mont. 386; 80 Pac. 926.

Los Angeles Co. v. Occidental Co., 144 Cal. 533; 78 Pac. 25.

6099. (§ 4413.) *Distinction between real and personal property.*—It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by

pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

Christiansen v. Aldrich, 30 Mont. 451; 76 Pac. 1008. Fleishman v. Woods, 135 Cal. 261; 67 Pac. 276.

6100. (§ 4414.) *Contract signed by one party only, may be enforced by others.*—A party who has signed a written contract, may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

Bird v. Potter, 146 Cal. 288; 79 Pac. 970.

6101. (§ 4415.) *Liquidation of damages not a bar to specific performance.*—A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

Fleishman v. Woods, 135 Cal. 261; 67 Pac. 276.

6102. (§ 4416.) *What cannot be specifically enforced.*—The following obligations cannot be specifically enforced:

1. An obligation to render personal service, or to employ another therein.
2. An agreement to marry or live with another.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act, which the party has not power to perform lawfully when required to do so.
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done, clearly ascertainable.

Farnum v. Clarke, 148 Cal. 615; 84 Pac. 166.

6103. (§ 4417.) *What parties cannot be compelled to perform.*—Specific performance cannot be enforced against a party to a contract, in any of the following cases:

1. If he has not received an adequate consideration for the contract.
2. If it is not, as to him, just and reasonable.
3. If his assent was obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party, which has not been substantially fulfilled; or,
4. If his assent was given under the influence of mistake, misapprehension or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the

scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

Finlen v. Heinze, 28 Mont. 563; 73 Pac. 126. A party seeking specific performance of a contract is required to set forth the consideration therefor, and the burden of proof that such consideration

is inadequate is on the party resisting specific performance.

Traphagen v. Kirk, 30 Mont. 574; 77 Pac. 61.

White v. Sage, 149 Cal. 614; 87 Pac. 193.

6104. (§ 4418.) *What parties cannot have specific performance in their favor.*—Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial and either entirely immaterial, or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

6105. (§ 4419.) *Specific performance not required when oppressive.*—Specific performance cannot be compelled when it would operate more harshly upon the party required to perform than its refusal would operate upon the party seeking it.

6106. (§ 4420.) *Agreement to sell property by one who has no title.*—An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

6107. (§ 4421.) *Relief against parties claiming under the person bound to perform.*—Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith, and for value, and except also that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.

REVISION OF CONTRACTS.

Section 6108. When contract may be revised.

“ 6109. *Presumption as to intent of parties.*

“ 6110. *Principles of revision.*

“ 6111. *Enforcement of revised contract.*

6108. (§ 4430.) *When contract may be revised.*—When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done, without prejudice to rights acquired by third persons, in good faith and for value.

Gaffney M. Co. v. Hopkins, 21 Mont. 16; 52 Pac. 562. In an action to reform a contract, the complaint should allege some mistake in the making of the contract, or some mistake or inadvertence in reducing its terms to writing.

Hogan v. Kelly, 29 Mont. 488; 75 Pac. 82.

Chapin v. Ross, 2 C. App. 435; 84 Pac. 53.

6109. (§ 4431.) *Presumption as to intent of parties.*—For the purpose of revising a contract it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

6110. (§ 4432.) *Principles of revision.*—In revising a written instrument the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

6111. (§ 4433.) *Enforcement of revised contract.*—A contract may be first revised and then specifically enforced.

Messer v. Hibernia Society, 149 Cal. 126; 84 Pac. 835.

ARTICLE V.

RESCISSION OF CONTRACTS.

Section 6112. When rescission may be adjudged.

“ 6113. *Rescission for mistake.*

“ 6114. *Court may require party rescinding to do equity.*

6112. (§ 4440.) *When rescission may be adjudged.*—The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in § 5063 (2271); or,
2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,
3. When the public interest will be prejudiced by permitting it to stand.

6113. (§ 4441.) *Rescission for mistake.*—Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Green v. Duvergey, 146 Cal. 390; 80 Pac. 234.

6114. (§ 4442.) *Court may require party rescinding to do equity.*—On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation or restoration to the other which justice may require.

Green v. Duvergey, 146 Cal. 390; 80 Pac. 234.

ARTICLE VI.

CANCELLATION OF INSTRUMENTS.

Section 6115. When cancellation may be ordered.

“ 6116. *Instrument obviously void.*

“ 6117. *Cancellation in part.*

6115. (§ 4450.) *When cancellation may be ordered.*—A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

Merk v. Bowery Co., 31 Mont. 309; 78 Pac. 523.

Angus v. Craven, 132 Cal. 697; 64 Pac. 1091.

6116. (§ 4451.) *Instrument obviously void.*—An instrument, the invalidity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

Castro v. Barry, 79 Cal. 445; 21 Pac. 946.

6117. (§ 4452.) *Cancellation in part.*—Where an instrument is evidence of different rights or obligations it may be canceled in part and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

Section 6118. Preventive relief, how granted.

“ 6119. *Provisional injunctions.*

“ 6120. *Injunction, when allowed.*

“ 6121. *Injunction, when not allowed.*

6118. (§ 4460.) *Preventive relief, how granted.*—Preventive relief is granted by injunction, provisional or final.

6119. (§ 4461.) *Provisional injunctions.*—Provisional injunctions are regulated by the Code of Civil Procedure.

6120. (§ 4462.) *Injunction, when allowed.*—Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief.

2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. Where the obligation arises from a trust.

6121. (§ 4463.) *Injunction, when not allowed.*—An injunction cannot be granted:

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of the United States.

3. To stay proceedings in another state upon a judgment of a court of that state.

4. To prevent the execution of a public statute, by officers of the law, for the public benefit.

5. To prevent the breach of a contract, the performance of which would not be specifically enforced.

6. To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

7. To prevent a legislative act by a municipal corporation.

Farnum v. Clarke, 148 Cal. 615; 84 Pac. 166.

PART II.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I. GENERAL PRINCIPLES.

II. FRAUDULENT INSTRUMENTS AND TRANSFERS.

III. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

TITLE I.

GENERAL PRINCIPLES.

Section 6122. Who is a debtor.

“ 6123. *Who is a creditor.*

“ 6124. *Contracts of debtor are valid.*

“ 6125. *Payments in preference.*

“ 6126. *Relative rights of different creditors.*

6122. (§ 4480.) *Who is debtor.*—A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Calkins v. Howard, 2 C. App. 235; 83 Pac. 280.

6123. (§ 4481.) *Who is a creditor.*—A creditor, within the meaning of this title, is one in whose favor an obligation exists by reason of which he is or may become entitled to the payment of money.

Calkins v. Howard, 2 C. App. 235; 83 Pac. 280.

6124. (§ 4482.) *Contracts of debtor are valid.*—In the absence of fraud every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Roberts v. Burr, 135 Cal. 158; 67 Pac. 46.

6125. (§ 4483.) *Payments in preference.*—A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

6126. (§ 4484.) *Relative rights of different creditors.*—Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has interest in, or is entitled as a creditor, to resort to some, but not all of them,

the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction and without doing injustice to third persons.

Estate of Levin, 139 Cal. 352; 63 Pac. 335.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

- Section 6127. Transfers, etc., with intent to defraud creditors.*
" 6128. Certain transfers presumed fraudulent.
" 6129. Creditor's right must be judicially ascertained.
" 6130. Question of fraud, how determined.
" 6131. Sale of merchandise in bulk. Seller to furnish list of creditors.
" 6132. Sale without statement fraudulent and void.
" 6133. Penalty for false statement.
" 6134. What constitutes a sale and transfer within meaning of this act.
" 6135. Exceptions.

6127. (§ 4490.) *Transfers, etc., with intent to defraud creditors.*—Every transfer of property, or charge thereon made, every obligation incurred, every judicial proceeding taken, and every act performed, with intent to delay or defraud any creditor, or other person, of his demands, is void against all creditors of the debtor and their representatives or successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Westheimer v. Goodkind, 24 Mont. 103; 60 Pac. 815. This section is declaratory of the common law.

Babcock v. Maxwell, 29 Mont. 35; 74 Pac. 66.

Cooper v. Nolan, 138 Cal. 250; 71 Pac. 179.

6128. (§ 4491.) *Certain transfers presumed fraudulent.*—Every transfer of personal property, other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

Yank v. Bordeaux, 23 Mont. 208; 58 Pac. 43. Where a joint owner of personal property, in the possession of another joint owner, sells his interest, the

failure of the purchaser to take possession does not, as against execution creditors of the seller, avoid the sale. The presumption referred to in this section

is to be indulged where the person making the transfer has at the time the possession or control of the property.

Morris v. McLaughlin, 25 Mont. 153; 64 Pac. 220.

Babcock v. Maxwell, 29 Mont. 35; 74 Pac. 66. A transfer by a debtor of property, not accompanied by change of possession, is not void as against the assignee for the benefit of the debtor's creditors. The estate of the debtor does not devolve by the assignment but is granted to such assignee.

Stewart v. Hoffman, 31 Mont. 189; 77 Pac. 691. A mortgage of personal property and transfer thereunder are void against a trustee in bankruptcy, where the mortgage was made more than fourteen months prior to the transfer.

Ettien v. Drum, 32 Mont. 317; 80 Pac. 370. This section applies to range cattle. A custom cannot vary the terms of, or

operate to abrogate or repeal a general statute. Where one purchases an entire herd of range cattle with the brand, but delivery of only a portion thereof is actually made, the vendee may not recover those not delivered from a subsequent purchaser in good faith, under an alleged custom among cattlemen that one buying an entire herd of such cattle with their brand, some of which are not actually delivered, becomes the owner of those not delivered.

Webster v. Sherman, 33 Mont. 456; 84 Pac. 880. *Quere*: Is this section relative to transfers of personal property conclusively presumed to be fraudulent, applicable to transfers between husband and wife?

Ettien v. Drum, 35 Mont. 86; 88 Pac. 659.

Calkins v. Howard, 2 C. App. 235; 83 Pac. 280.

6129. (§ 4492.) *Creditor's right must be judicially ascertained.*—A creditor can avoid the act or obligation of his debtor for fraud, only where the fraud obstructs the enforcement, by legal process, of his right to take the property effected by the transfer or obligation.

Estate of Fath, 132 Cal. 613; 64 Pac. 995.

6130. (§ 4493.) *Question of fraud, how determined.*—In all cases arising under § 4688 (1650), or under the provisions of this title, except as otherwise provided in § 6128 (4491), the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

Estate of Vance, 141 Cal. 627; 75 Pac. 323.

6131. *Sale of merchandise in bulk. Seller to furnish list of creditors.*—It shall be the duty of every person who shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, before paying to the vendor, or his agent or representative, or delivering to the vendor, or his agent, any part of the purchase price thereof, or any promissory note or other evidence therefor, to demand of and receive from such vendor, or agent, or if the vendor or agent be a corporation, then from the President, Vice-President, Secretary or Managing Agent of such corporation, a written statement, sworn to substantially as hereinafter provided, of the names and addresses of all the creditors of said vendor, to whom said vendor may be indebted, together with the amount of the indebtedness due or owing, and to become due or owing, by said vendor to each of such creditors; and it shall be the duty of said vendor, or agent, to furnish said statement, which shall be verified by an oath to the following effect:

State of Montana,

County of } ss.

Before me personally appeared.....

(vendor, or agent, as the case may be), who being by me first

duly sworn upon his oath doth depose and say that the foregoing statement contains the names of all the creditors of (the name of the vendor) together with their addresses, and that the amount set opposite each of said respective names is the amount now due and owing, and which shall become due and owing by (vendor) to such creditors, and that there are no creditors holding claims due, or which shall become due for or on account of goods, wares, or merchandise purchased upon credit or on account of money borrowed to carry on the business of which said goods are a part, other than as set forth in said statement, and in this affidavit, within the personal knowledge of affiant.

Subscribed and sworn to before me thisday of.....190...." (Title of Officer taking oath). [Act approved March 7, 1907, § 1.] (10th Sess. Chap. 145.)

6132. *Sale without statement fraudulent and void.*—Whenever any person shall bargain for, or purchase any stock of goods, wares or merchandise in bulk, for cash, or on credit, and shall pay any part of the purchase price, or execute or deliver to the vendor thereof, or to his order, or to any person for his use, any promissory note, or other evidence of indebtedness for said purchase price, or any part thereof, without first having demanded and received from said vendor, or from his agent, the statement provided for in § 6131 (1) of this act and verified as there provided, and without paying, or seeing to it that the purchase money of the said property, is applied to the payment of the bona fide claim of the creditors of the vendor as shown upon such verified statement, share and share alike, such sale, or transfer shall be fraudulent and void. [Act approved March 7, 1907, § 2.] (10th Sess. Chap. 145.)

6133. *Penalty for false statement.*—Any vendor of any stock of goods, wares or merchandise in bulk, or any person who is acting for, or on behalf of any vendor, who shall knowingly or wilfully make or deliver, or cause to be made or delivered, a statement as provided for in Section 6131 (1) of this Act which shall not include the names of all the creditors of such vendor with the correct amount due, and to become due to each of them or which shall contain any false or untrue statement, shall be deemed guilty of perjury, and upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years, or shall be fined in any sum not exceeding one thousand dollars. [Act approved March 7, 1907, § 3.] (10th Sess. Chap. 145.)

6134. *What constitutes a sale and transfer within meaning of this act.*—A sale and transfer in bulk in contemplation of this Act, shall be deemed to be any sale or transfer of an entire stock of goods, wares or merchandise out of the usual or ordinary course of business or trade of the vendor, or attempted to be sold or con-

veyed; *provided, however*, that if such vendor produces and delivers a written waiver of the provisions of this Act from his creditors as shown by such verified statements, then in that case, the provisions of this Act shall not apply. [*Act approved March 7, 1907, § 4.*] (*10th Sess. Chap. 145.*)

6135. *Exceptions.*—Nothing in this act contained shall apply to executors, administrators, receivers, or any public officer acting under judicial process. [*Act approved March 7, 1907, § 5.*] (*10th Sess. Chap. 145.*)

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

- Section 6136. *When debtor may execute assignment.*
 “ 6137. *Insolvency, what.*
 “ 6138. *Certain transfers not affected.*
 “ 6139. *What debts may be secured.*
 “ 6140. *Preferences may be given for wages.*
 “ 6141. *Preference must be absolute.*
 “ 6142. *Certain rights not affected by preferences in assignment.*
 “ 6143. *Joint and separate debts.*
 “ 6144. *Assignment, when void.*
 “ 6145. *The instrument of assignment.*
 “ 6146. *Compliance with provisions of last section necessary to validity of assignment.*
 “ 6147. *Assignee takes subject to rights of third parties.*
 “ 6148. *Inventory required.*
 “ 6149. *Verification of inventory.*
 “ 6150. *Recording assignment and filing inventory.*
 “ 6151. *Same.*
 “ 6152. *Effect of omitting to record.*
 “ 6153. *Assignment of real property.*
 “ 6154. *Bond of assignees.*
 “ 6155. *Conditions of disposal and conversion.*
 “ 6156. *Further security required.*
 “ 6157. *Accounting.*
 “ 6158. *Property exempt.*
 “ 6159. *Compensation.*
 “ 6160. *Assignees protected for acts done in good faith.*
 “ 6161. *Assent of creditors necessary to modification of assignment.*

6136. (§ 4510.) *When debtor may execute assignment.*—An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust for the satisfaction of his creditors, in conformity to the provisions of this chapter, subject, however to the provisions of this code, relative to trusts and

to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes or persons.

Babcock v. Maxwell, 21 Mont. 513; 54 Pac. 946. Neither an original assignee, nor his successor, as such, is a receiver. One who has been appointed by the court the successor of an assignee of an in-

solvent, may be sued without leave of court.

Babcock v. Maxwell, 29 Mont. 33; 74 Pac. 65.

Heath v. Wilson, 139 Cal. 367; 73 Pac. 182.

6137. (§ 4511.) *Insolvency, what.*—A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means as they become due.

Stadler v. Bank, 22 Mont. 219; 56 Pac. 120.

Cook v. Cockins, 117 Cal. 155; 48 Pac. 1025.

6138. (§ 4512.) *Certain transfers not affected.*—The provisions of this title do not prevent a person residing in another state or country from making there, in good faith and without intent to evade the laws of this state, a transfer of property situated within it; nor do they affect the power of a person, although insolvent and within this state, to transfer property to a particular creditor for the purpose of paying or securing the whole or a part of a debt owing to such creditor, whether in his own right or otherwise.

Fenton v. Edwards, 126 Cal. 50; 58 Pac. 320.

6139. (§ 4513.) *What debts may be secured.*—An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

Bank v. Menke, 128 Cal. 107; 60 Pac. 675.

6140. (§ 4514.) *Preferences may be given for wages.*—In all assignments of property made by any person, association, corporation, co-partnership, chartered company or corporation, to trustees or assignees on account of inability of the assignor or assignors at the time of the assignment to pay his or their debts, or in proceedings in insolvency, the wages of the miners, mechanics, salesmen, servants, clerks or laborers employed by such assignor or assignors for services rendered within sixty days immediately previous to such assignment, not to exceed two hundred dollars for each person, are preferred claims, and must be paid by such trustees or assignees before any other creditor or creditors of such assignor.

6141. (§ 4515.) *Preference must be absolute.*—A preference, in an assignment for the benefit of creditors, can only be given absolutely, and without reserving any power of revocation.

6142. (§ 4516.) *Certain rights not affected by preferences in assignment.*—No provision in an assignment, giving a preference to a creditor, can effect or impair any right of another creditor to priority of payment, whether created by law, or arising from an obligation or transaction of the parties.

6143. (§ 4517.) *Joint and separate debts.*—Joint, or joint and several debtors, can prefer their joint creditors only out of joint property; and can prefer the individual creditors of each only out of the separate property of each.

6144. (§ 4518.) *Assignment, when void.*—An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto in the following cases:

1. If it give a preference dependent upon any condition or contingency; or with any power of revocation reserved.
2. If it tend to coerce any creditor to release or compromise his demand.
3. If it provide for the payment of any claim known by the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor.
4. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all existing debts are paid.
5. If it confers upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.
6. If it exempt him from liability for neglect of duty or misconduct.
7. If it violates § 5375 (2971) of this code.

Rosenstein v. Coleman, 18 Mont. 459; 45 Pac. 1081. An assignment for the benefit of creditors, which empowers the assignee to sell and dispose of the assigned property as he may deem best, for cash or credit, or on time, is fraudulent

and void as to creditors. An intention to hinder, delay and defraud creditors is a necessary legal inference from a provision permitting credit sales.

Tuers v. Tuers, 131 Cal. 627; 63 Pac. 1008.

6145. (§ 4519.) *The instrument of assignment.*—An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and recorded as required by §§ 6150 (4524) and 6151 (4525); but recording in one county constitutes a compliance with the last mentioned sections. The assignment must be accompanied by the affidavit of the assignor and assignee that such assignment is made in good faith, for the benefit of the creditors of the assignor and without any design to hinder, delay, or defraud such creditors. The assent of the assignee, subscribed and acknowledged by him must appear in writing, embraced in, or at the end of, or indorsed upon, the assignment, before the same is recorded, and, if separate from the assignment, must be duly acknowledged.

Lacy v. Gunn, 144 Cal. 515; 78 Pac. 30.

6146. (§ 4520.) *Compliance with provisions of last section necessary to validity of assignment.*—Unless the provisions of the

last section are complied with, an assignment for the benefit of creditors is void, against every creditor of the assignor not assenting thereto.

Lacy v. Gunn, 144 Cal. 515; 78 Pac. 30.

6147. (§ 4521.) *Assignee takes subject to rights of third parties.*—An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor has, in respect to things in action, transferred by the assignment.

Durfee v. Harper, 22 Mont. 368; 56 Pac. 587. An assignee for the benefit of creditors to whom is assigned the title to stock pledged by the assignor, stands in the shoes of his assignor. Such assignee, in making a sale for cash, may set aside a sale to one, who could pay but a small part of the amount bid, and may resell the property on a smaller cash

bid. Such assignee may redeem property pledged by the assignor.

Babcock v. Maxwell, 29 Mont. 33; 74 Pac. 65. An assignee for the benefit of creditors cannot attack a previous transfer by the assignor as in fraud of creditors.

Bank v. Menke, 128 Cal. 106; 60 Pac. 675.

6148. (§ 4522.) *Inventory required.*—Within twenty days after an assignment is made for the benefit of creditors the assignor must make and file, in the manner prescribed by § 6150 (4524), a full and true inventory, showing:

1. All the creditors of the assignor.
2. The place of residence of each creditor, if known to the assignor; or if not known, that fact must be stated.
3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account or otherwise.
4. The true consideration of the liability in each case and the place where it arose.
5. Every existing judgment, mortgage or other security for the payment of any debt or liability of the assignor.
6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and,
7. All of the assignor's property at the date of the assignment, both real and personal of every kind, not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property, according to the best knowledge of the assignor.

Beardsley v. Frame, 85 Cal. 135; 24 Pac. 721.

6149. (§ 4523.) *Verification of inventory.*—An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief; but in case such assignor shall omit, neglect or refuse to make and deliver such inventory within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made and delivered to the judge of the district court of the county

where such assignment is recorded, such inventory as above required, in so far as he can; and for such purpose, said judge shall, at any time upon the application of such assignee, compel by order such delinquent assignor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory. The assignee shall verify the inventory so made by him to the effect that the same is in all respects just and true to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory within said thirty days, the district judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory within said thirty days, or such further time as may be allowed, the district judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal. The books and papers of such delinquent assignor shall at all times be subject to the inspection and examination of any creditor. The district judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is hereby declared to be a contempt, and obedience to such order may be enforced by attachment. The inventory shall be filed by said district judge in the office of the clerk of said county in which said assignment is recorded.

6150. (§ 4524.) *Recording assignment and filing inventory.*—An assignment for the benefit of creditors must be recorded, and the inventory required by § 6148 (4522) filed with the county clerk of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this state, with the clerk of the county in which his principal place of business was then situated; or, if he had not then a residence or place of business in this state, with the clerk of the county in which the principal part of the assigned property was then situated.

Wilhoit v. Lyons, 98 Cal. 411; 33 Pac. 325.

6151. (§ 4525.) *Same.*—If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by § 6148 (4522) must be filed with the county clerk of the county in which any of the assignors resided at its date, or in which any of them, not then residing in this state, had then a place of business.

6152. (§ 4526.) *Effect of omitting to record.*—An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value, unless it is recorded within twenty days after the date of the assignment.

Wilhoit v. Lyons, 98 Cal. 412; 33 Pac. 325.

6153. (§ 4527.) *Assignment of real property.*—Where an assignment for the benefit of creditors embraces real property, it is subject to the provisions of article IV. of the chapter on recording transfers, as well as to those of this title.

Wilhoit v. Lyons, 98 Cal. 412; 33 Pac. 325.

6154. (§ 4528.) *Bond of assignees.*—Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to the state, for the use and benefit of the creditors in such amount as may be fixed by a judge of the district court of the county in which the original inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

6155. (§ 4529.) *Conditions of disposal and conversion.*—Until the inventory and affidavit required by § § 6148 (4522) and 6149 (4523) have been made and filed, and the assignee has given a bond as required by the last section, the assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust. But in case the assignor shall fail to present such inventory within the twenty days required, then the assignee, before the ten days shall have elapsed, may apply to said district judge by verified petition, for leave to file a provisional bond, until such time as he may be able to present the inventory as hereinbefore provided. The district judge shall, in the case provided in § 6149 (5423), and may also, at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, assignee, surety and such other persons as such judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin said assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and, upon his discharge, upon his own application, such assignee's bond shall be canceled and discharged. The new assignee shall give a bond, to be approved as required. The district judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended, and also to require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to such orders by attachment.

6156. (§ 4330.) *Further security required.*—The district judge may, upon his own motion, or upon the application of any

party in interest, and on such notice as he may direct to be given to the assignor, assignee and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

6157. (§ 4531.) *Accounting*.—After six months from the date of an assignment for the benefit of creditors the assignee may be required, on petition of any creditor, to account before the district court of the county where the accompanying inventory was filed in the manner prescribed by the Code of Civil Procedure.

6158. (§ 4532.) *Property exempt*.—Property exempt from execution and insurance upon the life of the assignor do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

6159. (§ 4533.) *Compensation*.—In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians; but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

6160. (§ 4534.) *Assignees protected for acts done in good faith*.—An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith, in the execution of the trust, merely for the reason that the assignment is afterwards adjudged void.

6161. (§ 4535.) *Assent of creditors necessary to modification of assignment*.—An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART III.

NUISANCE.

TITLE I. GENERAL PRINCIPLES.

II. PUBLIC NUISANCES.

III. PRIVATE NUISANCES.

TITLE I.

GENERAL PRINCIPLES.

Section 6162. *Nuisance, what.*

“ 6163. *Public nuisance.*

“ 6164. *Private nuisance.*

Section 6165. What is not deemed a nuisance.

“ 6166. *Successive owners.*

“ 6167. *Abatement does not preclude action.*

6162. (§ 4550.) *Nuisance, what.*—Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner, of any navigable lake, or river, bay, stream, canal or basin, or any public park, square, street or highway, is a nuisance.

Chessman v. Hale, 31 Mont. 584; 79 Pac. 256. The use of water by an upper appropriator in such a way as to carry sand, gravel and mining debris over the land of a lower proprietor, so as to render it valueless, constitutes a nuisance, at common law and under this section.

Murray v. Butte, 35 Mont. 170; 88 Pac. 789.

Reynolds v. Presidio R. Co., 1 C. App. 231; 81 Pac. 1118.

6163. (§ 4551.) *Public nuisance.*—A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Reynolds v. Presidio R. Co., 1 C. App. 231; 81 Pac. 1118.

6164. (§ 4552.) *Private nuisance.*—Every nuisance not included in the definition of the last section, is private.

6165. (§ 4553.) *What is not deemed a nuisance.*—Nothing which is done or maintained under the express authority of the statute can be deemed a nuisance.

Pasadena v. Stimson, 91 Cal. 255; 27 Pac. 604.

6166. (§ 4554.) *Successive owners.*—Every successive owner of property, who neglects to abate a continuing nuisance upon, or, in the use of, such property, created by a former owner, is liable therefor, in the same manner as the one who first created it.

Watson v. Colusa Co., 31 Mont. 523; 79 Pac. 17. It is not necessary to give notice to one who continues a nuisance

to abate it before bringing a suit for damages arising therefrom.

Coats v. Atchison R. Co., 1 C. App. 446; 82 Pac. 640.

6167. (§ 4555.) *Abatement does not preclude action.*—The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

Chessman v. Hale, 31 Mont. 587; 79 Pac. 257.

Murray v. Butte, 35 Mont. 169; 88 Pac. 789.

TITLE II.

PUBLIC NUISANCES.

Section 6168. Lapse of time does not legalize.

“ 6169. *Abatement.*

“ 6170. *When notice is required.*

“ 6171. *Remedies for public nuisance.*

“ 6172. *Action.*

“ 6173. *How dated.*

6168. (§ 4570.) *Lapse of time does not legalize.*—No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

McLean v. Llewellyn Works, 2 C. App. 350; 83 Pac. 1082.

6169. (§ 4571.) *Abatement.*—The remedies against a public nuisance are:

1. Indictment or information.
2. A civil action; or,
3. Abatement.

6170. (§ 4572.) *When notice is required.*—The remedy by indictment or information is regulated by the Penal Code.

6171. (§ 4573.) *Remedies for public nuisance.*—A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

Reynolds v. Presidio R. Co., 1 C. App. 231; 81 Pac. 1118.

6172. (§ 4574.) *Action.*—A public nuisance may be abated by any public body or officer authorized thereto by law.

6173. (§ 4575.) *How abated.*—Any person may abate a public nuisance which is specially injurious to him by removing, or, if necessary, destroying the thing that constitutes the same, without committing a breach of the peace or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

Section 6174. Remedies for private nuisance.

“ 6175. *Abatement, when allowed.*

“ 6176. *When notice is required.*

6174. (§ 4590.) *Remedies for private nuisance.*—The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

Chessman v. Hale, 31 Mont. 587; 79 Pac. 257.

6175. (§ 4591.) *Abatement, when allowed.*—A person injured by a private nuisance may abate it by removing, or, if nec-

essary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury.

Murray v. Butte, 35 Mont. 168; 88 Pac. 789.

6176. (§ 4592.) *When notice is required.*—Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART IV.

MAXIMS OF JURISPRUDENCE.

6177. (§ 4600.) The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

Matter of La Societe, 123 Cal. 530; 56 Pac. 458.

6178. (§ 4601.) When the reason of a rule ceases so should the rule itself.

Katz v. Walkinshaw, 141 Cal. 123; 70 Pac. 663.

6179. (§ 4602.) Where the reason is the same the rule should be the same.

Potter v. Lohse, 31 Mont. 96; 77 Pac. 420. A *bona fide* purchaser of property for value from a pledgee of the same, who sold it in violation of the pledge, succeeds to all the rights of the

pledgee. A purchaser from a chattel mortgagee will likewise succeed to the right of his grantor, with respect to the property purchased, on the principle of subrogation.

6180. (§ 4603.) One must not change his purpose to the injury of another.

6181. (§ 4604.) Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

Stadler v. Bank, 22 Mont. 204; 56 Pac. 114. A provision in a note that it is negotiable at a particular bank is not a waiver of the effect of a stipulation for payment of attorney's fees in case of suit, which, under other statutory pro-

visions, renders the note non-negotiable.

Bullard v. Smith, 28 Mont. 399; 72 Pac. 763.

Mallory v. See, 129 Cal. 359; 61 Pac. 1123.

6182. (§ 4605.) One must so use his own rights as not to infringe upon the rights of another.

Fordham v. N. P. R. R. Co., 30 Mont. 432; 76 Pac. 1043. Flood waters of a river, which become severed from the main current still form part of the river and may not be obstructed by a railroad company by a fill along its right of way without openings, so as to injure the property of another.

Quinlan v. Calvert, 31 Mont. 119; 77 Pac. 430. The fact that water has its source on land owned by a person does not of itself give him the exclusive right thereto, so as to prevent others from acquiring rights therein.

Chessman v. Hale, 31 Mont. 584; 79 Pac. 256. An appropriator of an upper water right who, in a contract to deliver it to a lower owner of land at a certain place, has reserved the right to use the water for placer mining purposes, ac-

quires no title to the water itself, or any right to pollute the water to any greater extent than is permitted by law; and, while he has a right to a reasonable use of the water for the purposes specified, although such use does result in fouling it to some extent, yet he cannot cover the lower proprietor's land with mining debris, so as to render it valueless.

Norman v. Cobley, 32 Mont. 205; 79 Pac. 1061. One who has a prior right to the use of the waters of one creek cannot let those waters run to waste, and use the full amount of his appropriation of the waters of another creek to the detriment of a junior appropriator on the latter creek.

Jordahl v. Hayda, 1 C. App. 699; 82 Pac. 1079.

6183. (§ 4606.) He who consents to an act is not wronged by it.

6184. (§ 4607.) Acquiescence in error takes away the right of objecting to it.

6185. (§ 4608.) No one can take advantage of his own wrong.

6186. (§ 4609.) He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

6187. (§ 4610.) He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

Baillarge v. Clark, 145 Cal. 594; 79 Pac. 268.

6188. (§ 4611.) No one should suffer for the act of another.

Davoust v. Alameda, 149 C. 77; 84 Pac. 760.

6189. (§ 4612.) He who takes the benefit, must bear the burden.

Estate of Porter, 138 Cal. 622; 72 Pac. 173.

6190. (§ 4613.) One who grants a thing is presumed to grant also whatever is essential to its use.

Smith v. Corbit, 116 Cal. 591; 48 Pac. 725.

6191. (§ 4614.) For every wrong there is a remedy.

Davoust v. Alameda, 149 Cal. 77; 84 Pac. 760.

6192. (§ 4615.) Between those who are equally in the right, or equally in the wrong, the law does not interpose.

6193. (§ 4616.) Between rights otherwise equal, the earliest is preferred.

6194. (§ 4617.) No man is responsible for that which no man can control.

6195. (§ 4618.) The law helps the vigilant, before those who sleep on their rights.

Kavanaugh v. Flavin, 35 Mont. 137; 88 Pac. 764.

6196. (§ 4619.) The law respects form less than substance.

Goodyear R. Co. v. Eureka, 135 Cal. 615; 67 Pac. 1043.

6197. (§ 4620.) That which ought to have been done, is to be regarded as done, in favor of him to whom, and against whom, performance is due.

Moffitt v. Rosencrans, 136 Cal. 419; 69 Pac. 87.

6198. (§ 4621.) That which does not appear to exist is to be regarded as if it did not exist.

Slater v. McAvoy, 123 Cal. 439; 56 Pac. 49.

6199. (§ 4622.) The law never requires impossibilities.

Mendocino Co. v. Peters, 2 C. App. 29; 82 Pac. 1122.

6200. (§ 4623.) The law neither does nor requires idle acts.

Matteson v. Wagoner, 147 Cal. 745; 82 Pac. 436.

6201. (§ 4624.) The law disregards trifles.

Davidson v. Devine, 70 Cal. 521; 11 Pac. 664.

6202. (§ 4625.) Particular expressions qualify those which are general.

Matter of La Societe, 123 Cal. 530; 56 Pac. 458.

6203. (§ 4626.) Contemporaneous exposition is in general the best.

Morton v. Broderick, 118 Cal. 484; 50 Pac. 644.

6204. (§ 4627.) The greater contains the less.

Grannis v. Court, 146 Cal. 256; 79 Pac. 891.

6205. (§ 4628.) Superfluity does not vitiate.

6206. (§ 4629.) That is certain which can be made certain.

Chase v. Trout, 146 Cal. 368; 80 Pac. 81.

6207. (§ 4630.) Time does not confirm a void act.

6208. (§ 4631.) The incident follows the principal, and not the principal the incident.

Vernon v. Board, 142 Cal. 517; 76 Pac. 253.

6209. (§ 4632.) An interpretation which gives effect is preferred to one which makes void.

Estate of Sanford, 136 Cal. 104; 68 Pac. 494.

6210. (§ 4633.) Interpretation must be reasonable.

People v. Curry, 130 Cal. 94; 62 Pac. 516.

6211. (§ 4634.) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

McNear v. Bourn, 122 Cal. 623; 55 Pac. 596.

PART V.

DEFINITION AND GENERAL PROVISIONS.

Section 6212. When this code takes effect.

“ 6213. *Not retroactive.*

“ 6214. *Rules of construction.*

“ 6215. *Provisions similar to existing laws, how construed.*

“ 6216. *Actions, etc., not affected.*

“ 6217. *Holidays.*

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" 6228. *Notice.*

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" 6233. *Duty of county clerk.*

" 6234. *Effect of repeal.*

" 6235. *Statutes repealed.*

" 6236. *This act, how cited.*

6212. (§ 4650.) *When this code takes effect.*—This code takes effect at 12 o'clock noon on the first day of July, 1895.

Bullard v. Smith, 28 Mont. 397; 72 Pac. 763.

6213. (§ 4651.) *Not retroactive.*—No part of it is retroactive, unless expressly so declared. In this state there is no common law in any case where the law is declared by the code or other statute; but where not so declared, if the same is applicable and of a general nature, and not in conflict with the codes or other statutes, the common law shall be the law and rule of decision.

Menard v. M. C. R. Co., 22 Mont. 349; 56 Pac. 595. All prior vested rights in general of railroad corporations are carefully preserved.

Estate of Richards, 133 Cal. 427; 65 Pac. 1034.

Westheimer v. Goodkind, 24 Mont. 100; 60 Pac. 814.

Bullard v. Smith, 28 Mont. 397; 72 Pac. 763. The power of the legislature to enact retroactive or retrospective laws

is recognized, but a limitation is placed on the exercise of such power by requiring that such laws must be expressly declared to be retroactive in their operation.

Wilson v. Pickering, 28 Mont. 440; 72 Pac. 823.

Hardesty v. Largey L. Co., 34 Mont. 162; 86 Pac. 32.

Coulter v. Union L. Co., 34 Mont. 604; 87 Pac. 977.

6214. (§ 4652.) *Rules of construction.*—The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

Grannis v. Court, 146 Cal. 247; 79 Pac. 891.

Westheimer v. Goodkind, 24 Mont. 105; 60 Pac. 816. This section does not apply to section 1538, fifth division. Compiled Statutes, requiring chattel

mortgages to be duly verified and acknowledged.

Nelson v. Great N. Co. 28 Mont. 322; 72 Pac. 650.

Coulter v. Union L. Co., 34 Mont. 604; 87 Pac. 977.

6215. (§ 4653.) *Provisions similar to existing laws, how construed.*—The provisions of this code, so far as they are substantially the same as existing statutes, or the common law, must be construed as continuations thereof, and not as new enactments.

N. W. I. Co. v. L. & C. Co., 28 Mont. 495; 72 Pac. 985.

Blakeman v. Miller, 136 Cal. 142; 68 Pac. 587.

6216. (§ 4654.) *Actions, etc., not affected.*—No action or proceeding commenced before this code takes effect and no right accrued is affected by its provisions.

Menard v. M. C. R. Co., 22 Mont. 349; 56 Pac. 595.

Allen v. Allen, 95 Cal. 202; 30 Pac. 213.

6217. (§ 4655.) *Holidays*.—Holidays, within the meaning of this code, are: Every Sunday, the 1st day of January, the 22d day of February, the 30th Day of May, the 4th day of July, the 1st Monday of September, the 25th day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving or holiday. If the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July or the 25th day of December, fall upon a Sunday, the Monday following is a holiday.

6218. (§ 4656.) *Business days*.—All other days than those mentioned in the next preceding section are to be deemed business days for all purposes.

6219. (§ 4657.) *Computation of time*.—The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last is a holiday, and then it is also excluded.

Rauer v. Broder, 107 Cal. 284; 40 Pac. 430.

6220. (§ 4658.) *Certain acts not to be done on holidays*.—Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed, by law or contract, to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Northey v. Bankers' Association, 110 Cal. 551; 42 Pac. 1079.

6221. (§ 4659.) *Joint authority construed*.—Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

Coffey v. Court, 2 C. App. 459; 83 Pac. 580.

6222. (§ 4660.) *Words and phrases construed*.—Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in § 6224 (4662), are to be construed according to such peculiar and appropriate meaning and definition.

King v. Elling, 24 Mont. 481; 62 Pac. 788.

Dayton v. Ewart, 28 Mont. 157; 72 Pac. 422.

Weaver v. San Francisco, 146 Cal. 733; 81 Pac. 119.

6223. (§ 4661.) *Meaning of words*.—Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

6224. (§ 4662.) *Certain terms defined.*—Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term “testify,” and every written one in the term “depose;” signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have in this code the signification attached to them in this section, unless otherwise apparent from the context:

1. The word “property” includes property real and personal.
2. The words “real property” are co-extensive with lands, tenements, hereditaments and possessory titles to public lands in this state.
3. The words “personal property” include money, goods, chattels, things in action and evidences of debt.
4. The word “year,” as used in this code, means a calendar year, and “month,” a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day and involve no questions of priority.
5. The word “state,” when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words “United States” may include the district and territories.
6. The word “will” includes codicils.

State v. Court, 24 Mont. 333; 61 Pac. 883.

Summerville v. Stockton Co., 142 Cal. 539; 76 Pac. 243.

6225. (§ 4663.) *Third persons.*—The words “third person,” as used in this code, includes all who are not parties to the obligations or transactions concerning which the phrase is used.

6226. (§ 4664.) *Usage, what.*—Usage, within the meaning of this code, is a reasonable and lawful public custom, concerning the transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

6227. (§ 4665.) *Words usual and customary.*—The word “usual,” and “customary,” as used in this code, mean, “according to usage.”

6228. (§ 4666.) *Notice.*—Notice is:

1. Actual—which consists in express information of a fact.
2. Constructive—which is imputed by law.

Trerise v. Bottego, 32 Mont. 249; 79 Pac. 1058. This section embodies an old rule of chancery. *Merrill v. Pacific Co.*, 131 Cal. 587; 63 Pac. 915.

6229. (§ 4667.) *Constructive notice.*—Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself, in all cases in which, by prosecuting such inquiry, he might have learned such facts.

Trerise v. Bottego, 32 Mont. 248; 79 Pac. 1058. *Merrill v. Pacific Co.*, 131 Cal. 587; 63 Pac. 915.

6230. (§ 4668.) *When laws take effect.*—Every law, unless a different time shall be prescribed therein, shall commence and take effect throughout this state, on, and not before, the twentieth day after the day of its final passage.

6231. (§ 4669.) *“Final passage,” meaning of.*—The words “final passage,” as used in the preceding section, shall be held to mean the enactment into law, of a bill which has passed the legislative assembly, either with or without the approval of the governor, as provided in § 12, of article VII., of the constitution.

6232. (§ 4670.) *Heretofore and hereafter, meaning of.*—Whenever the term “heretofore” occurs in any statute, it shall be construed to mean any time previous to the day such statute shall take effect; and whenever the word “hereafter” occurs, it shall be construed to mean the time after the statute containing the term shall take effect.

6233. (§ 4671.) *Duty of county clerk.*—The county clerk of any county, is also clerk of the county commissioners and ex-officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or as recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners, or as recorder.

6234. (§ 4672.) *Effect of repeal.*—No statute, law, or rule, is continued in force because it is consistent with the provisions of this code on the same subject; but in all cases provided for by this code, all statutes, laws, and rules heretofore in force in this state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are repealed or abrogated. This repeal or abrogation does not revive any former

law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in this code provided.

Menard v. M. C. R. Co., 22 Mont. 349;
56 Pac. 595.

Market R. Co. v. Hellman, 109 Cal.
580; 42 Pac. 225.

6235. (§ 4673.) *Statutes repealed.*—Subject to the provisions of the next preceding section the following statutes and parts of statutes are hereby repealed, to-wit: § § 140; 409 to 430, inclusive; 432 to 557, inclusive, of the probate practice act of the compiled statutes; § § 1 to 10, inclusive; § 20; § § 156 to 161, inclusive; 202 to 210, inclusive; 999 to 1006, inclusive; 1204; 1236 to 1238, inclusive; 1239 to 1266, inclusive; 1296; 1411 to 1432, inclusive; 1439 to 1450, inclusive; 1538 to 1555, inclusive, except 1545, 1547, 1551, 1554; § § 1597 to 1608, inclusive; § § 1963 and 1970; § § 1983 to 1985, inclusive, of the fifth division of the compiled statutes; § 1, page 60, extra session laws, 1887, concerning marriages; § 1, page 121, laws sixteenth session, concerning alimony; § § 1 to 25, inclusive, of “act concerning dower,” of session laws of 1876.

6236. (§ 4674.) *This act, how cited.*—This act, whenever cited, enumerated, referred to, or amended, may be designated simply as “the civil code,” adding, when necessary, the number of the section. [*Civil Code, except where otherwise noted. Act approved Feb. 19, 1895.*]

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